SIXTY-NINTH DAY
(Saturday, May 30, 1987)

The Senate met at 9:30 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Our Heavenly Father, on this day help us to accept others and learn to give more than we demand. Inspire these who serve as they focus on the major issues that beset our State.

Grant to them divine guidance and fortitude as they blend their individual talents and be our unseen companion as we each earn our daily bread.

We give special thanks this morning for the healing and return of Senator Truan. In Your name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CONFERENCE COMMITTEE ON HOUSE BILL 858

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 858** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 858** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chairman; Edwards, Johnson, Parmer and Krier.

CONFERENCE COMMITTEE ON HOUSE BILL 1262

Senator Sims called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1262** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1262** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chairman; Lyon, Brown, Blake and Santiesteban.

SENATE BILL 1131 WITH HOUSE AMENDMENT

Senator Green called **S.B. 1131** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Gavin

Amend **S.B. 1131** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 4, Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. AFFIDAVIT. (a) If a local public official or a person related to that official in the first or second degree by either affinity or consanguinity has a substantial interest in a business entity that would be pecuniarily ~~[peculiarly]~~ affected by any official action taken by the governing body, the local public official, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the official recordkeeper of the governmental entity.

(b) If a local public official is required to file and does file an affidavit of interest under Subsection (a) of this section, that official shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

SECTION 2. Section 5, Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) A local public official may perform an act prohibited by Section 3 of this Act if a majority of the membership of the governmental entity of which the official is a member is composed of persons who are required to file affidavits of similar interests under Subsection (b) of Section 4 of this Act on the official action.

SECTION 3. An offense committed under Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes), before the effective date of this Act is governed by the law in existence on the date the offense occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1987.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Green moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1131** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chairman; Whitmire, Anderson, Parmer and Barrientos.

(Senator Henderson in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 161, Relating to the release of information contained in vehicle registration records and certain records maintained by the State Department of Highways and Public Transportation and the Department of Public Safety. (Amended)

S.B. 262, Relating to institutions served by higher education authorities; the exercise of the powers of higher education authorities by nonprofit corporations; and board members of higher education authorities.

S.B. 277, Relating to examination and rights of fire fighters and police officers in certain cities. (Substituted)

S.B. 497, Relating to sanctions for violations of the code of Judicial Conduct by candidates for certain judicial offices.

S.B. 632, Relating to blood testing and evidence of blood testing in paternity suits and to venue in such suits.

S.B. 646, Relating to the exemption from certain administrative procedures in the Administrative Procedure and Texas Register Act of contested cases of breath analysis certification suspension, revocation, or termination.

S.B. 691, Relating to authority of a governmental entity or corporation to establish, operate, and maintain a foreign trade zone.

S.B. 753, Relating to the authority of a county to adopt zoning and building construction ordinances for the areas around Lake Tawakoni; providing a criminal penalty. (Substituted and amended)

S.B. 792, Relating to the exchange of certain property by Lamar University and the City of Port Arthur.

S.B. 841, Relating to the jurisdiction of the supreme court in certain civil cases.

S.B. 868, Relating to actions and meetings of the Texas Employment Commission and participation by member by telephonic communication. (Amended)

S.B. 947, Relating to updating provisions of the Water Code to conform to the reorganization of the state water agencies. (Substituted)

S.B. 1036, Relating to the authority of certain partnerships to exercise the power of eminent domain.

S.B. 1068, Relating to the distribution of certain independently administered estates.

S.B. 1069, Relating to files and records of certain offenses committed by juveniles.

S.B. 1273, Permitting governmental units to issue obligations to fund self-insurance and to form or become members of risk retention groups.

S.B. 1309, Relating to the employment of off-duty officers to monitor the taking of shellfish from polluted areas.

S.B. 1331, Relating to the provision of and the service fee for 9-1-1 emergency telephone service in certain counties.

S.B. 1332, Relating to the liability of communication districts.

S.B. 1382, Relating to allocation of the authority in the state to issue private activity bonds. (Amended)

S.B. 1409, Relating to authorization of county commissioners within certain counties within a population bracket to establish and finance systems to assist the administration of the judicial appellate process by the establishment of a court cost fee in certain cases.

S.B. 1420, Relating to the procedures for adopting an ad valorem tax rate and to the use of certain ad valorem taxes.

S.B. 1425, Relating to the conveyance, lease, or exchange of state-owned real property and improvements in Smith County and disposition of proceeds.

S.B. 1426, Relating to the exchange of certain state-owned property in Collin County.

S.B. 1435, Relating to activities that may be performed by cooperative associations and their systems.

S.B. 1436, Relating to alternative dispute resolution procedures. (Amended)

S.B. 1444, Relating to the tuition rate applicable to certain scholarship students.

S.B. 1478, Relating to abolishing a transit authority.

S.B. 1479, Relating to exempting from licensing and regulation certain bingo games and bingo materials.

S.B. 1487, Relating to the organization and operation of Texas A&M University at Galveston.

S.B. 1525, Relating to the creation, administration, powers, duties, operations, fiscal procedures, annexation authority, bond and taxing authority, and the exercise of eminent domain by the Lipan-Kickapoo Water Conservation District.

S.B. 744, Relating to cogeneration by state agencies; the creation, powers, and duties of the State Cogeneration Council; the ability of state agencies to charge for excess cogeneration capacity and energy; and the authority of the Public Utility Commission to adopt and enforce rules and regulations; and declaring an emergency. (Amended)

S.B. 1154, Relating to the authority of the Industrial Accident Board to bar certain persons from practicing before that board.

S.B. 223, Relating to investigations of missing persons and missing or runaway children. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1237 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1237, Relating to certain allocations and transfers of state revenue.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Amend **H.B. 1237**, SECTION 2, line 2, Page 2 of the printed bill by changing the reference "Section 7" to "Section 3."

The amendment was read and was adopted viva voce vote.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1237 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1237** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE CONCURRENT RESOLUTION 146

Senator Harris offered the following resolution:

S.C.R. 146, Requesting the return of **H.B. 1606** for further consideration.

The resolution was read.

On motion of Senator Harris and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

MOTION TO PLACE HOUSE BILL 2235 ON SECOND READING

Senator Anderson moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2235, Relating to the creation of a job-start loan program to provide employment opportunities for certain displaced farmers and other persons.

On motion of Senator Anderson and by unanimous consent, the motion to suspend the regular order was withdrawn.

COMMITTEE SUBSTITUTE HOUSE BILL 2611 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2611, Relating to courts in the Fifth and Twelfth Court of Appeals Districts.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2611 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2611** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 684

Senator Brown offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 96(a) of the Rules of the Senate, 70th Legislature, 1987, is suspended, as provided by Senate Rule 96(f), to enable the Senate to the extent described in this resolution to permit the conference committee appointed to adjust the differences between the Senate and House versions of **S.B. 1191**, relating to appeal from an action taken pursuant to Section 26.177 of the Water Code, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action by adding the following language in Section 1 of the bill:

(1) "An appeal must be filed with the Commission within sixty (60) days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city or within sixty (60) days after the effective date of this Act for any ruling, order, decision, ordinance, program, resolution or act of the city which occurred after January 1, 1987."

(2) In addition to the appeal issues of "invalid, arbitrary, unreasonable, or ineffective", add the word "inefficient."

These amendments are needed to provide a time certain within which appeals must be filed, and further clarify and specify the issues on appeal.

The resolution was read and was adopted viva voce vote.

HOUSE BILL 102 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 102, Relating to the recruitment of women and ethnic minorities into programs of engineering and science at institutions of higher education.

The bill was read second time and was passed to third reading viva voce vote.

REMARKS BY SENATOR TRUAN

Senator Truan was welcomed back to the Senate after heart surgery.

He expressed his appreciation to the Lieutenant Governor, the Secretary of the Senate and to the Members for all their encouragement, support and help with his legislative program while he was away.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 319, Relating to the adoption of leasing policies for special events facilities of The University of Texas System component institutions.

H.B. 2293, Relating to certain annexations and annexation service requirements.

H.B. 1388, Relating to the state's certification of chemical dependency counselors and the evaluation system and related matters; providing a penalty.

H.B. 2343, Relating to regulation by the Public Utility Commission of Texas of fuel cost collection by electric utilities.

H.B. 1177, Relating to accident prevention services for certain professional liability insurance.

H.B. 1829, Relating to the prevention and control of communicable diseases; providing penalties.

H.B. 1374, Relating to the dispensing of free wine by the holder of a winery permit.

H.B. 1308, Relating to regional and areawide wastewater management systems.

H.B. 1789, Relating to the cancellation of water rights permits, certified filings, and certificates of adjudication.

H.B. 202, Relating to the licensure of state hospitals.

H.B. 220, Relating to the regulation of bumpers and suspension systems on certain motor vehicles.

H.B. 1943, Relating to the application of strict liability or liability without negligence to the generation, transmission, distribution, sale or use of electric energy; amending the Revised Civil Statutes of Texas, 1925, as amended by adding a new Article 1436d; prescribing an effective date; and declaring an emergency.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 2448 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2448, Relating to the authority of the commissioner of the General Land Office to trade state agency land for other land for the purpose of creating a site suitable for the superconducting super collider.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2448 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2448** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1904 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1904, Relating to the creation of the offense of employment harmful to minors.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1904 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1904** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MOTION TO PLACE HOUSE BILL 1831 ON SECOND READING

Senator Montford moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1831, Relating to the collection of certain fees, charges, and deposits by institutions of higher education and accounting for certain income as educational and general funds.

On motion of Senator Montford and by unanimous consent, the motion to suspend the regular order was withdrawn.

HOUSE BILL 1818 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1818, Relating to prohibiting corporations or labor organizations from making contributions or expenditures in connection with a recall election.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend **H.B. 1818** as follows:

(1) Strike all below the enacting clause and substitute the following:

SECTION 1. Title 15, Election Code, is revised to read as follows:

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

Chapter 251. General Provisions
Chapter 252. Campaign Treasurer
Chapter 253. Restrictions on Contributions and Expenditures
Chapter 254. Political Reporting
Chapter 255. Regulating Political Advertising and Campaign Communications
Chapter 256. Citizen Complaint

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS
CHAPTER 251. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS
Sec. 251.002. OFFICEHOLDERS COVERED
Sec. 251.003. PROHIBITION OF DOCUMENT FILING FEE
Sec. 251.004. VENUE FOR OFFENSES
Sec. 251.005. OUT-OF-STATE COMMITTEES EXCLUDED
Sec. 251.006. FEDERAL OFFICE EXCLUDED
Sec. 251.007. TIMELINESS OF ACTION BY MAIL
[Sections 251.008-251.030 reserved for expansion]
SUBCHAPTER B. DUTIES OF SECRETARY OF STATE
Sec. 251.031. INTERPRETATION AND ADMINISTRATION
Sec. 251.032. FORMS
Sec. 251.033. NOTIFICATION OF DEADLINE FOR FILING REPORTS
Sec. 251.034. REVIEW OF REPORTS
Sec. 251.035. REPORT TO GOVERNOR AND LEGISLATURE

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS
CHAPTER 251. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this title:

(1) "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution;

(B) the filing of an application for a place on a ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; and

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

(2) "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term does not include:

(A) an honorarium to a public servant that is excluded from the application of penal sanctions by Section 36.10(3), Penal Code; or

(B) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made.

(3) "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

(4) "Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(5) "Political contribution" means a campaign contribution or an officeholder contribution.

(6) "Expenditure" means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.

(7) "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.

(8) "Direct campaign expenditure" means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.

(9) "Officeholder expenditure" means an expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(10) "Political expenditure" means a campaign expenditure or an officeholder expenditure.

(11) "Reportable activity" means a political contribution, political expenditure, or other activity required to be reported under this title.

(12) "Political committee" means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

(13) "Specific-purpose committee" means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified; or

(B) assisting one or more officeholders, all of whom are identified.

(14) "General-purpose committee" means a political committee that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates who are unidentified or are seeking offices that are unknown; or

(ii) measures that are unidentified; or

(B) assisting one or more officeholders who are unidentified.

(15) "Out-of-state political committee" means a political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

(17) "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

(18) "Labor organization" means an agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(19) "Measure" means a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

Sec. 251.002. OFFICEHOLDERS COVERED. (a) The provisions of this title applicable to an officeholder apply only to a person who holds an elective public office and to the secretary of state.

(b) For purposes of this title, a state officer-elect or a member-elect of the legislature is considered an officeholder beginning on the day after the date of the general or special election at which the officer-elect or member-elect was elected. This subsection does not relieve a state officer-elect or member-elect of the legislature of any reporting requirements the person may have as a candidate under this title.

Sec. 251.003. PROHIBITION OF DOCUMENT FILING FEE. A charge may not be made for filing a document required to be filed under this title.

Sec. 251.004. VENUE FOR OFFENSES. Venue for a criminal offense prescribed by this title is in the county of residence of the defendant, unless the defendant is not a Texas resident, in which case venue is in Travis County.

Sec. 251.005. OUT-OF-STATE COMMITTEES EXCLUDED. (a) An out-of-state political committee is not subject to Chapter 252 or 254, except as provided by Subsection (b) or (c).

(b) If an out-of-state committee decides to file a campaign treasurer appointment under Chapter 252, at the time the appointment is filed the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

(c) If an out-of-state committee performs an activity that removes the committee from out-of-state status as defined by Section 251.001(15), the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

Sec. 251.006. FEDERAL OFFICE EXCLUDED. (a) Except as provided by Subsection (b), this title does not apply to a candidate for an office of the federal government.

(b) A candidate for an elective office of the federal government shall file with the secretary of state a copy of each document relating to his candidacy that is required to be filed under federal law. The document shall be filed within the same period in which it is required to be filed under the federal law.

Sec. 251.007. TIMELINESS OF ACTION BY MAIL. When this title requires a notice, report, or other document or paper to be delivered, submitted, or filed within a specified period or before a specified deadline, a delivery, submission, or filing by first-class United States mail or common or contract carrier is timely, except as otherwise provided by this title, if:

(1) it is properly addressed with postage or handling charges prepaid; and

(2) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within the period or before the deadline, or if the person required to take the action furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within the period or before the deadline.

[Sections 251.008-251.030 reserved for expansion]

SUBCHAPTER B. DUTIES OF SECRETARY OF STATE

Sec. 251.031. INTERPRETATION AND ADMINISTRATION. (a) The secretary of state shall interpret and administer this title in the exercise of the secretary's authority stated in Section 31.003.

(b) The secretary of state shall make the interpretations and administrative rulings available to any person on request.

Sec. 251.032. FORMS. In addition to furnishing samples of the appropriate forms to the authorities having administrative duties under this title, the secretary of state shall furnish the forms to each political party's state executive committee and county chairman of each county executive committee.

Sec. 251.033. NOTIFICATION OF DEADLINE FOR FILING REPORTS. (a) The secretary of state shall notify each person responsible for filing a report with

the secretary under Subchapters C through F, Chapter 254, of the deadline for filing a report, except that notice of the deadline is not required for a political committee involved in an election other than a primary election or the general election for state and county officers.

(b) If the secretary of state is unable to notify a person of a deadline after two attempts, the secretary is not required to make any further attempts to notify the person of that deadline or any future deadlines until the person has notified the secretary of state of the person's current address.

Sec. 251.034. REVIEW OF REPORTS. (a) Periodically, the secretary of state shall review the reports filed with the secretary under this title.

(b) If as a result of the review the secretary of state determines that a person is in significant noncompliance with this title, the secretary shall notify the person by certified mail of that determination.

(c) If the secretary of state determines the significant noncompliance is correctable, the person notified under Subsection (b) must take the action necessary to comply with this title not later than the 30th day after the date the notice was mailed, and the notice must include a statement of the obligation to comply within that time.

(d) Periodically, the secretary of state shall prepare a list of the persons who are notified by the secretary under Subsection (b), unless they have taken timely action to correct the noncompliance under Subsection (c). The list is open to public inspection. The secretary shall preserve the list for one year after the date on which it was prepared.

(e) The secretary of state shall adopt rules defining significant noncompliance for purposes of this section and shall make the rules available on request.

(f) In determining whether a person is in significant noncompliance with this title, the secretary of state shall apply the rules defining significant noncompliance that are in effect on the day on which the report is filed.

(g) A person who fails to take the action necessary to comply with this title within the period prescribed by Subsection (c) is civilly liable to the state for $100. This subsection applies only if the secretary of state determines that the significant noncompliance is correctable.

(h) If the civil penalty is not paid by the 10th day after the end of the period prescribed by Subsection (c), the secretary of state shall notify the attorney general to initiate suit to recover the penalty.

(i) A penalty paid voluntarily under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(j) Section 256.005(b) does not apply to the procedure for collecting a penalty under this section.

(k) Notwithstanding Section 251.003, a person who files an amended report after receiving notice from the secretary of state under Subsection (b) shall pay to the secretary at the time of filing the amended report a filing fee of $10 to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 251.035. REPORT TO GOVERNOR AND LEGISLATURE. After January 1 of each year, the secretary of state shall submit to the governor and members of the legislature a report that covers the preceding calendar year and contains:

(1) each interpretation, ruling, or opinion issued under Section 251.031;

(2) a statement of each violation of this title that has been reported to the secretary of state and referred to the appropriate official for prosecution;

(3) a statement of any difficulties encountered in the administration of this title; and

(4) suggested legislation to conform this title to pertinent court decisions or to interpretations, rulings, or opinions issued by the secretary of state.

CHAPTER 252. CAMPAIGN TREASURER

CHAPTER 252. CAMPAIGN TREASURER

Sec. 252.001. APPOINTMENT OF CAMPAIGN TREASURER REQUIRED. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter.

Sec. 252.002. CONTENTS OF APPOINTMENT. (a) A campaign treasurer appointment must be in writing and include:

(1) the campaign treasurer's name;

(2) the campaign treasurer's residence or business street address;

(3) the campaign treasurer's telephone number; and

(4) the name of the person making the appointment.

(b) A political committee that files its campaign treasurer appointment with the secretary of state must notify the secretary in writing of any change in the campaign treasurer's address not later than the 10th day after the date on which the change occurs.

Sec. 252.003. CONTENTS OF APPOINTMENT BY GENERAL-PURPOSE COMMITTEE. (a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a general-purpose committee must include:

(1) the name of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the committee, if applicable, or the name of each person who determines to whom the committee makes contributions or the name of each person who determines for what purposes the committee makes expenditures;

(2) the full name and address of each general-purpose committee to whom the committee intends to make political contributions; and

(3) the name of the committee and, if the name is an acronym, the words the acronym represents.

(b) If any of the information required to be included in a general-purpose committee's appointment changes, excluding changes reported under Section

252.002(b), the committee shall file an amended appointment with the secretary of state not later than the 30th day after the date the change occurs.

(c) The name of a general-purpose committee may not be the same as or deceptively similar to the name of any other general-purpose committee whose campaign treasurer appointment is filed with the secretary of state. The secretary shall determine whether the name of a general-purpose political committee is in violation of this prohibition and shall immediately notify the campaign treasurer of the offending political committee of that determination. The campaign treasurer of the political committee must file a name change with the secretary not later than the 14th day after the date of notification. A campaign treasurer who fails to file a name change as provided by this subsection or a political committee that continues to use a prohibited name after its campaign treasurer has been notified by the secretary commits an offense. An offense under this subsection is a Class B misdemeanor.

Sec. 252.004. DESIGNATION OF ONESELF. An individual may appoint himself as campaign treasurer.

Sec. 252.005. AUTHORITY WITH WHOM APPOINTMENT FILED: CANDIDATE. An individual must file a campaign treasurer appointment for the individual's own candidacy with:

(1) the secretary of state, if the appointment is made for candidacy for:

(A) a statewide office;

(B) a district office filled by voters of more than one county;

(C) state senator;

(D) state representative; or

(E) the State Board of Education;

(2) the county clerk, if the appointment is made for candidacy for a county office, a precinct office, or a district office other than one included in Subdivision (1);

(3) the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer, if the appointment is made for candidacy for an office of a political subdivision other than a county;

(4) the county clerk if:

(A) the appointment is made for candidacy for an office of a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) no boundary of the political subdivision crosses a boundary of the county; or

(5) the secretary of state if:

(A) the appointment is made for candidacy for an office of a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) the political subdivision is situated in more than one county.

Sec. 252.006. AUTHORITY WITH WHOM APPOINTMENT FILED: SPECIFIC-PURPOSE COMMITTEE FOR SUPPORTING OR OPPOSING CANDIDATE OR ASSISTING OFFICEHOLDER. A specific-purpose committee for supporting or opposing a candidate or assisting an officeholder must file its campaign treasurer appointment with the same authority as the appointment for candidacy for the office.

Sec. 252.007. AUTHORITY WITH WHOM APPOINTMENT FILED: SPECIFIC-PURPOSE COMMITTEE FOR SUPPORTING OR OPPOSING MEASURE. A specific-purpose committee for supporting or opposing a measure must file its campaign treasurer appointment with:

(1) the secretary of state, if the measure is to be submitted to voters of the entire state;

(2) the county clerk, if the measure is to be submitted to voters of a single county in an election ordered by a county authority;

(3) the secretary of the governing body of the political subdivision or, if the political subdivision has no secretary, with the governing body's presiding officer, if the measure is to be submitted at an election ordered by an authority of a political subdivision other than a county;

(4) the county clerk if:

(A) the measure concerns a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) no boundary of the political subdivision crosses a boundary of a county; or

(5) the secretary of state if:

(A) the measure concerns a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) the political subdivision is situated in more than one county.

Sec. 252.008. MULTIPLE FILINGS BY SPECIFIC-PURPOSE COMMITTEE NOT REQUIRED. If under this chapter a specific-purpose committee is required to file its campaign treasurer appointment with more than one authority, the appointment need only be filed with the secretary of state and, if so filed, need not be filed with the other authorities.

Sec. 252.009. AUTHORITY WITH WHOM APPOINTMENT FILED: GENERAL-PURPOSE COMMITTEE. A general-purpose committee must file its campaign treasurer appointment with the secretary of state.

Sec. 252.010. TRANSFER OF APPOINTMENT. (a) If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment.

(b) The original appointment terminates on the filing of the copy with the appropriate authority or on the 10th day after the date the decision to seek a different office is made, whichever is earlier.

Sec. 252.011. TIME APPOINTMENT TAKES EFFECT; PERIOD OF EFFECTIVENESS. (a) A campaign treasurer appointment takes effect at the time it is filed with the authority specified by this chapter.

(b) A campaign treasurer appointment continues in effect until terminated.

Sec. 252.012. REMOVAL OF CAMPAIGN TREASURER. (a) A campaign treasurer appointed under this chapter may be removed at any time by the appointing authority by filing the written appointment of a successor in the same manner as the original appointment.

(b) The appointment of a successor terminates the appointment of the campaign treasurer who is removed.

(c) If the campaign treasurer of a specific-purpose political committee required to file its campaign treasurer appointment with the secretary of state or of

a general-purpose political committee is removed by the committee, the departing campaign treasurer shall immediately file written notification of the termination of appointment with the secretary of state.

Sec. 252.013. TERMINATION OF APPOINTMENT ON VACATING POSITION. (a) If a campaign treasurer resigns or otherwise vacates the position, the appointment is terminated at the time the vacancy occurs.

(b) A campaign treasurer who vacates his position shall immediately notify the appointing authority in writing of the vacancy.

(c) If the campaign treasurer of a specific-purpose political committee required to file its campaign treasurer appointment with the secretary of state or of a general-purpose political committee resigns or otherwise vacates the position, the campaign treasurer shall immediately file written notification of the vacancy with the secretary of state.

Sec. 252.014. PRESERVATION OF FILED APPOINTMENTS. The authority with whom a campaign treasurer appointment is filed under this chapter shall preserve the appointment for two years after the date the appointment is terminated.

Sec. 252.015. ASSISTANT CAMPAIGN TREASURER. (a) Each specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) or a statewide or district measure and each general-purpose committee may appoint an assistant campaign treasurer by written appointment filed with the secretary of state.

(b) In the campaign treasurer's absence, the assistant campaign treasurer has the same authority as a campaign treasurer.

(c) Sections 252.011, 252.012, 252.013, and 252.014 apply to the appointment and removal of an assistant campaign treasurer.

CHAPTER 253. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RESTRICTIONS

Sec. 253.001. CONTRIBUTION AND EXPENDITURE IN ANOTHER'S NAME PROHIBITED
Sec. 253.002. UNLAWFUL DIRECT CAMPAIGN EXPENDITURE
Sec. 253.003. UNLAWFULLY MAKING OR ACCEPTING CONTRIBUTION
Sec. 253.004. UNLAWFULLY MAKING EXPENDITURE
Sec. 253.005. EXPENDITURE FROM UNLAWFUL CONTRIBUTION

[Sections 253.006-253.030 reserved for expansion]

SUBCHAPTER B. CANDIDATES, OFFICEHOLDERS, AND POLITICAL COMMITTEES

Sec. 253.031. CONTRIBUTION AND EXPENDITURE WITHOUT CAMPAIGN TREASURER PROHIBITED
Sec. 253.032. LIMITATION ON CONTRIBUTION BY OUT-OF-STATE COMMITTEE
Sec. 253.033. CASH CONTRIBUTIONS EXCEEDING $100 PROHIBITED
Sec. 253.034. RESTRICTIONS ON CONTRIBUTIONS DURING REGULAR LEGISLATIVE SESSION
Sec. 253.035. RESTRICTIONS ON PERSONAL USE OF CONTRIBUTIONS
Sec. 253.036. OFFICEHOLDER CONTRIBUTIONS USED IN CONNECTION WITH CAMPAIGN
Sec. 253.037. RESTRICTIONS ON CONTRIBUTION OR EXPENDITURE BY GENERAL-PURPOSE COMMITTEE

[Sections 253.038-253.060 reserved for expansion]

CHAPTER 253. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RESTRICTIONS

Sec. 253.001. CONTRIBUTION AND EXPENDITURE IN ANOTHER'S NAME PROHIBITED. (a) A person may not knowingly make or authorize a political contribution or political expenditure in the name of or on behalf of another unless the person discloses the other's name in order for the proper disclosure to be made.

(b) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.002. UNLAWFUL DIRECT CAMPAIGN EXPENDITURE. (a) A person may not knowingly make or authorize a direct campaign expenditure.

(b) This section does not apply to:

(1) an individual making an expenditure authorized by Subchapter C;

(2) a corporation or labor organization making an expenditure authorized by Subchapter D;

(3) a candidate making or authorizing an expenditure for the candidate's own election;

(4) a political committee; or

(5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.003. UNLAWFULLY MAKING OR ACCEPTING CONTRIBUTION. (a) A person may not knowingly make a political contribution in violation of this chapter.

(b) A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.

(c) Except as provided by Subsection (d), a person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(d) A violation of Subsection (a) or (b) is a felony of the third degree if the contribution is made in violation of Subchapter D.

Sec. 253.004. UNLAWFULLY MAKING EXPENDITURE. (a) A person may not knowingly make or authorize a political expenditure in violation of this chapter.

(b) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.005. EXPENDITURE FROM UNLAWFUL CONTRIBUTION. (a) A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of this chapter.

(b) This section does not apply to a political expenditure that is prohibited by Section 253.101.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

[Sections 253.006-253.030 reserved for expansion]

SUBCHAPTER B. CANDIDATES, OFFICEHOLDERS, AND POLITICAL COMMITTEES

Sec. 253.031. CONTRIBUTION AND EXPENDITURE WITHOUT CAMPAIGN TREASURER PROHIBITED. (a) A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

(b) A political committee may not knowingly accept a political contribution or make or authorize a political expenditure at a time when a campaign treasurer appointment for the committee is not in effect.

(c) A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure supporting or opposing a candidate for an office specified by Section 252.005(1) in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day.

(d) This section does not apply to an out-of-state political committee unless the committee is subject to Chapter 252 under Section 251.005.

(e) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.032. LIMITATION ON CONTRIBUTION BY OUT-OF-STATE COMMITTEE. (a) In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than $500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed $500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee:

(1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than $100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the commission.

(b) This section does not apply to a contribution from an out-of-state political committee if the committee appointed a campaign treasurer under Chapter 252

before the contribution was made and is subject to the reporting requirements of Chapter 254.

(c) A person who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor.

(d) A candidate, officeholder, or political committee shall include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies.

(e) A candidate, officeholder, or political committee that accepts political contributions totaling $500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted:

(1) the same information for the out-of-state political committee required for general-purpose committees by Sections 252.002 and 252.003; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the commission.

Sec. 253.033. CASH CONTRIBUTIONS EXCEEDING $100 PROHIBITED. (a) A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed $100.

(b) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.034. RESTRICTIONS ON CONTRIBUTIONS DURING REGULAR LEGISLATIVE SESSION. (a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the day of final adjournment, a person may not knowingly make a political contribution to:

(1) a statewide officeholder;

(2) a member of the legislature; or

(3) a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature.

(b) A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature may not knowingly accept a political contribution during the period prescribed by Subsection (a).

(c) This section does not apply to a political contribution that was made and accepted with the intent that it be used:

(1) in an election held or ordered during the period prescribed by Subsection (a) in which the person accepting the contribution is a candidate if the contribution was made after the person appointed a campaign treasurer with the appropriate authority and before the person was sworn in for that office;

(2) to defray expenses incurred in connection with an election contest; or

(3) by a person who holds a state office or a member of the legislature if the person or member was defeated at the general election held immediately before the session is convened or by a specific-purpose political committee that supports or assists only that person or member.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.035. RESTRICTIONS ON PERSONAL USE OF CONTRIBUTIONS. (a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.

(b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.

(c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.

(d) In this section, "personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, interest, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County; or

(2) payments of federal income taxes due on interest and other income earned on political contributions.

(e) Subsection (a) applies only to political contributions accepted on or after September 1, 1983. Subsection (b) applies only to political contributions accepted on or after September 1, 1987.

(f) A person who converts a political contribution to his personal use in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(g) A specific-purpose committee that converts a political contribution to the personal use of a candidate, officeholder, or former candidate or officeholder in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(h) A candidate or officeholder who makes expenditures from his personal funds for campaign or officeholder purposes may reimburse his personal funds from political contributions in the amount of those expenditures.

(i) Except as provided by Subsection (j), "personal use" does not include the use of contributions for:

(1) defending a criminal or civil action brought against the person in his status as a candidate or officeholder; or

(2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

(j) If the candidate or officeholder defending the criminal action is finally convicted or if the candidate or officeholder does not finally prevail in defending the civil action, excluding a contest or action described by Subsection (i)(2), the candidate or officeholder shall reimburse his political funds in the amount of expenditures made in defending the action. Political funds expended in participating in a contest or action described by Subsection (i)(2) or expended prior to settlement of a civil action brought against the person in his status as a candidate or officeholder are not required to be reimbursed under this subsection. The candidate or officeholder shall reimburse his political funds in the total amount of expenditures made in defending the action not later than two years after the date on which final judgment is rendered. A candidate or officeholder who fails to make the reimbursement as required by this subsection is considered to have converted contributions to his personal use.

(k) A candidate or officeholder or former candidate or officeholder shall report each reimbursement in the report required to be filed under this title that covers the period in which the reimbursement is made. A former candidate or officeholder who has not completed the reimbursement required by this section is considered to have unexpended political contributions for purposes of Subchapter H, Chapter 254.

Sec. 253.036. OFFICEHOLDER CONTRIBUTIONS USED IN CONNECTION WITH CAMPAIGN. An officeholder who lawfully accepts

officeholder contributions may use those contributions in connection with the officeholder's campaign for elective office after appointing a campaign treasurer.

Sec. 253.037. RESTRICTIONS ON CONTRIBUTION OR EXPENDITURE BY GENERAL-PURPOSE COMMITTEE. (a) A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has:

(1) filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made; and

(2) accepted political contributions from at least 10 persons.

(b) A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee.

(c) Subsection (a) does not apply to a general-purpose committee that accepts contributions from a multicandidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with Section 253.032.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

[Sections 253.038-253.060 reserved for expansion]

SUBCHAPTER C. INDIVIDUALS

Sec. 253.061. DIRECT EXPENDITURE OF $100 OR LESS. Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from his own property if:

(1) the total expenditures on any one or more candidates or measures do not exceed $100; and

(2) the individual receives no reimbursement for the expenditures.

Sec. 253.062. DIRECT EXPENDITURE EXCEEDING $100. (a) Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from his own property that exceed $100 on any one or more candidates or measures if:

(1) the individual complies with Chapter 254 as if the individual were a campaign treasurer of a political committee; and

(2) the individual receives no reimbursement for the expenditures.

(b) An individual making expenditures under this section is not required to file a campaign treasurer appointment.

Sec. 253.063. TRAVEL EXPENSE. A direct campaign expenditure consisting of personal travel expenses incurred by an individual may be made without complying with Section 253.062(a)(1).

[Sections 253.064-253.090 reserved for expansion]

SUBCHAPTER D. CORPORATIONS AND LABOR ORGANIZATIONS

Sec. 253.091. CORPORATIONS COVERED. This subchapter applies only to corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or law of another state or nation.

Sec. 253.092. TREATMENT OF INCORPORATED POLITICAL COMMITTEE. If a political committee the only principal purpose of which is accepting political contributions and making political expenditures incorporates for liability purposes only, the committee is not considered to be a corporation for purposes of this subchapter.

Sec. 253.093. CERTAIN ASSOCIATIONS COVERED. (a) For purposes of this subchapter, the following associations, whether incorporated or not, are considered to be corporations covered by this subchapter: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or

interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies.

(b) For purposes of this subchapter, the members of the associations specified by Subsection (a) are considered to be stockholders.

Sec. 253.094. CONTRIBUTIONS AND EXPENDITURES PROHIBITED. (a) A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter.

(b) A corporation or labor organization may not make a political contribution or political expenditure in connection with a recall election, including the circulation and submission of a petition to call an election.

(c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Sec. 253.095. PUNISHMENT OF AGENT. An officer, director, or other agent of a corporation or labor organization who commits an offense under this subchapter is punishable for the grade of offense applicable to the corporation or labor organization.

Sec. 253.096. CONTRIBUTION ON MEASURE. A corporation or labor organization may make campaign contributions from its own property in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively.

Sec. 253.097. DIRECT EXPENDITURE ON MEASURE. A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with Section 253.061 or 253.062 as if the corporation or labor organization were an individual.

Sec. 253.098. COMMUNICATION WITH STOCKHOLDERS OR MEMBERS. (a) A corporation or labor organization may make one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members.

(b) An expenditure under this section is not reportable under Chapter 254.

Sec. 253.099. NONPARTISAN VOTER REGISTRATION AND GET-OUT-THE-VOTE CAMPAIGNS. (a) A corporation or labor organization may make one or more expenditures to finance nonpartisan voter registration and get-out-the-vote campaigns aimed at its stockholders or members, as applicable, or at the families of its stockholders or members.

(b) An expenditure under this section is not reportable under Chapter 254.

Sec. 253.100. EXPENDITURES FOR GENERAL-PURPOSE COMMITTEE. (a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

(c) A labor organization may engage in activity authorized for a corporation by Subsections (a) and (b). For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

(d) An expenditure under this section is not reportable by the general-purpose committee as a political contribution under Chapter 254.

Sec. 253.101. UNLAWFUL CONTRIBUTION OR EXPENDITURE BY COMMITTEE. (a) A political committee assisted by a corporation or labor

organization under Section 253.100 may not make a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment or condition of membership in a labor organization.

(b) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Sec. 253.102. COERCION PROHIBITED. (a) A corporation or labor organization or a political committee assisted by a corporation or labor organization under Section 253.100 commits an offense if it uses or threatens to use physical force, job discrimination, or financial reprisal to obtain money or any other thing of value to be used to influence the result of an election or to assist an officeholder.

(b) A political committee assisted by a corporation or labor organization under Section 253.100 commits an offense if it accepts or uses money or any other thing of value that is known by a member or officer of the political committee to have been obtained in violation of Subsection (a).

(c) An offense under this section is a felony of the third degree.

Sec. 253.103. CORPORATE LOANS. (a) A corporation may not make a loan to a candidate, officeholder, or political committee for campaign or officeholder purposes unless:

(1) the corporation has been legally and continuously engaged in the business of lending money for at least one year before the loan is made; and

(2) the loan is made in the due course of business.

(b) This section does not apply to a loan covered by Section 253.096.

(c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

[Sections 253.104-253.130 reserved for expansion]

SUBCHAPTER E. CIVIL LIABILITY

Sec. 253.131. LIABILITY TO CANDIDATES. (a) A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of this chapter is liable for damages as provided by this section.

(b) If the contribution or expenditure is in support of a candidate, each opposing candidate whose name appears on the ballot is entitled to recover damages under this section.

(c) If the contribution or expenditure is in opposition to a candidate, the candidate is entitled to recover damages under this section.

(d) In this section, "damages" means:

(1) twice the value of the unlawful contribution or expenditure; and

(2) reasonable attorney's fees incurred in the suit.

(e) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Sec. 253.132. LIABILITY TO POLITICAL COMMITTEES. (a) A corporation or labor organization that knowingly makes a campaign contribution to a political committee or a direct campaign expenditure in violation of Subchapter D is liable for damages as provided by this section to each political committee of opposing interest in the election in connection with which the contribution or expenditure is made.

(b) In this section, "damages" means:

(1) twice the value of the unlawful contribution or expenditure; and

(2) reasonable attorney's fees incurred in the suit.

(c) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Sec. 253.133. LIABILITY TO STATE. A person who knowingly makes or accepts a political contribution or makes a political expenditure in violation of this chapter is liable for damages to the state in the amount of triple the value of the unlawful contribution or expenditure.

CHAPTER 254. POLITICAL REPORTING

SUBCHAPTER A. RECORDKEEPING

[Sections 254.002-254.030 reserved for expansion]

SUBCHAPTER B. POLITICAL REPORTING GENERALLY

[Sections 254.043-254.060 reserved for expansion]

SUBCHAPTER C. REPORTING BY CANDIDATE

[Sections 254.067-254.090 reserved for expansion]

SUBCHAPTER D. REPORTING BY OFFICEHOLDER

[Sections 254.098-254.120 reserved for expansion]

SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

CHAPTER 254. POLITICAL REPORTING

SUBCHAPTER A. RECORDKEEPING

Sec. 254.001. RECORDKEEPING REQUIRED. (a) Each candidate and each officeholder shall maintain a record of all reportable activity.

(b) Each campaign treasurer of a political committee shall maintain a record of all reportable activity.

(c) The record must contain the information that is necessary for filing the reports required by this chapter.

(d) A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record.

(e) A person who violates this section commits an offense. An offense under this section is a Class B misdemeanor.

[Sections 254.002-254.030 reserved for expansion]

SUBCHAPTER B. POLITICAL REPORTING GENERALLY

Sec. 254.031. GENERAL CONTENTS OF REPORTS. (a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed $50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed $50, the dates the loans are made, the interest rate if that rate is below prime on the day the loan is made, and the full name of the person or financial institution making the loans and of each guarantor of the loans;

(3) the amount of political expenditures that in the aggregate exceed $50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of $50 or less accepted and the total amount or a specific listing of the political expenditures of $50 or less made during the reporting period; and

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period.

(b) If no reportable activity occurs during a reporting period, the person required to file a report shall indicate that fact in the report.

Sec. 254.032. NONREPORTABLE PERSONAL TRAVEL EXPENSE. A political contribution consisting of personal travel expense incurred by an individual is not required to be reported under this chapter if the individual receives no reimbursement for the expense.

Sec. 254.033. NONREPORTABLE PERSONAL SERVICE. A political contribution consisting of an individual's personal service is not required to be reported under this chapter if the individual receives no compensation for the service.

Sec. 254.034. TIME OF ACCEPTING CONTRIBUTION. (a) A determination to accept or refuse a political contribution that is received by a candidate, officeholder, or political committee shall be made not later than the end of the reporting period during which the contribution is received.

(b) If the determination to accept or refuse a political contribution is not made before the time required by Subsection (a), for purposes of this chapter, the contribution is considered to have been accepted on the last day of that reporting period.

(c) A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a statement for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted.

(d) A candidate, officeholder, or political committee commits an offense if the person knowingly fails to return a political contribution as required by Subsection (c).

(e) An offense under this section is a Class A misdemeanor.

Sec. 254.035. TIME OF MAKING EXPENDITURE. (a) For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b).

(b) If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received.

Sec. 254.036. FORM OF REPORT; AFFIDAVIT. (a) Each report filed under this chapter must be on a form prescribed by the secretary of state and must be written in black ink or typed with black typewriter ribbon unless the report is a computer printout. If the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the secretary of state.

(b) Each report filed under this chapter must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

Sec. 254.037. FILING DEADLINE. The deadline for filing a report required by this chapter is 5 p.m. on the last day permitted under this chapter for filing the report.

Sec. 254.038. TELEGRAM REPORT BY CERTAIN CANDIDATES AND POLITICAL COMMITTEES. (a) In addition to other reports required by this chapter, the following persons shall file additional reports during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day:

(1) a candidate for state senator who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed $1,000 during that reporting period;

(2) a candidate for state representative who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed $200 during that reporting period;

(3) a specific-purpose committee for supporting or opposing a candidate for state senator and that accepts political contributions from a person that in the aggregate exceed $1,000 during that reporting period; and

(4) a specific-purpose committee for supporting or opposing a candidate for state representative and that accepts political contributions from a person that in the aggregate exceed $200 during that reporting period.

(b) Each report required by this section must include the amount of the contributions specified by Subsection (a), the full name and address of the person making the contributions, and the dates of the contributions.

(c) A report under this section shall be filed by telegram or by hand with the secretary of state not later than 48 hours after the contribution is accepted.

(d) Section 254.036 does not apply to a report required by this section.

Sec. 254.039. TELEGRAM REPORT BY CERTAIN GENERAL-PURPOSE COMMITTEES. (a) In addition to other reports required by this chapter, a general-purpose committee that makes direct campaign expenditures supporting or opposing either a single candidate that in the aggregate exceed $1,000 or a group of candidates that in the aggregate exceed $15,000 during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day shall file a report by telegram or by hand with the secretary of state not later than 48 hours after the expenditure is made.

(b) Each report required by this section must include the amount of the expenditures, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures.

(c) Section 254.036 does not apply to a report required by this section.

Sec. 254.040. PRESERVATION OF REPORTS. Each report filed under this chapter shall be preserved by the authority with whom it is filed for at least two years after the date it is filed.

Sec. 254.041. CRIMINAL PENALTY FOR UNTIMELY OR INCOMPLETE REPORT. (a) A person who is required by this chapter to file a report commits an offense if the person knowingly fails:

(1) to file the report on time; or

(2) to include in the report information that is required by this title to be included.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) A violation of Subsection (a)(2) by a candidate or officeholder is a Class A misdemeanor if the report fails to include information required by Section 254.061(3) or Section 254.091(2), as applicable.

Sec. 254.042. CIVIL PENALTY FOR LATE REPORT. (a) The secretary of state shall determine from any available evidence whether a report, other than a telegram report under Section 254.038 or 254.039, required to be filed with the secretary under this chapter is late. On making that determination, the secretary shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report is determined to be late, the person required to file the report is civilly liable to the state for $100. If the penalty is not paid by the 10th day after the date the notice is mailed under Subsection (a), the secretary of state shall notify the attorney general to initiate suit to recover the civil penalty.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(d) Section 256.005(b) does not apply to the procedure for collecting a penalty under this section.

[Sections 254.043-254.060 reserved for expansion]

SUBCHAPTER C. REPORTING BY CANDIDATE

Sec. 254.061. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a candidate must include:

(1) the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed;

(2) the campaign treasurer's name, residence or business street address, and telephone number;

(3) for each political committee from which the candidate received notice under Section 254.128 or 254.161:

(A) the committee's full name and address;

(B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and

(C) the full name and address of the committee's campaign treasurer; and

(4) the full name and address of each individual acting as a campaign treasurer of a political committee under Section 253.062 from whom the candidate received notice under Section 254.128 or 254.161.

Sec. 254.062. CERTAIN OFFICEHOLDER ACTIVITY INCLUDED. If an officeholder who becomes a candidate has reportable activity that is not reported under Subchapter D before the end of the period covered by the first report the candidate is required to file under this subchapter, the reportable activity shall be

included in the first report filed under this subchapter instead of in a report filed under Subchapter D.

Sec. 254.063. SEMIANNUAL REPORTING SCHEDULE FOR CANDIDATE. (a) A candidate shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Sec. 254.064. ADDITIONAL REPORTS OF OPPOSED CANDIDATE. (a) In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a person becomes an opposed candidate after a reporting period prescribed by Subsection (b) or (c), the person shall file his first report not later than the regular deadline for the report covering the period during which the person becomes an opposed candidate. The period covered by the first report begins the day the candidate's campaign treasurer appointment is filed.

(e) In addition to other required reports, an opposed candidate in a runoff election shall file one report for that election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

Sec. 254.065. FINAL REPORT. (a) If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a "final" report.

(b) The designation of a report as a final report:

(1) relieves the candidate of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and

(2) terminates the candidate's campaign treasurer appointment.

(c) If, after a candidate's final report is filed, reportable activity with respect to the candidacy occurs, the candidate shall file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to candidates. A report filed under this subsection may be designated as a final report.

Sec. 254.066. AUTHORITY WITH WHOM REPORTS FILED. Reports under this subchapter shall be filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed.

[Sections 254.067-254.090 reserved for expansion]

SUBCHAPTER D. REPORTING BY OFFICEHOLDER

Sec. 254.091. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by an officeholder must include:

(1) the officeholder's full name and address and the office held; and

(2) for each political committee from which the officeholder received notice under Section 254.128 or 254.161:

(A) the committee's full name and address;

(B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and

(C) the full name and address of the committee's campaign treasurer.

Sec. 254.092. CERTAIN OFFICEHOLDER EXPENDITURES EXCLUDED. An officeholder is not required to report officeholder expenditures made from the officeholder's personal funds.

Sec. 254.093. SEMIANNUAL REPORTING SCHEDULE FOR OFFICEHOLDER. (a) An officeholder shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through December 31.

Sec. 254.094. REPORT FOLLOWING APPOINTMENT OF CAMPAIGN TREASURER. (a) An officeholder who appoints a campaign treasurer shall file a report as provided by this section.

(b) The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed.

(c) The report shall be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed.

Sec. 254.095. REPORT NOT REQUIRED. If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the secretary of state has not accepted political contributions that in the aggregate exceed $500 or made political expenditures that in the aggregate exceed $500, the officeholder is not required to file a report covering that period.

Sec. 254.096. OFFICEHOLDER WHO BECOMES CANDIDATE. An officeholder who becomes a candidate is subject to Subchapter C during each period covered by a report required to be filed under Subchapter C.

Sec. 254.097. AUTHORITY WITH WHOM REPORTS FILED. Reports under this subchapter shall be filed with the authority with whom a campaign treasurer appointment by a candidate for the office held by the officeholder is required to be filed.

[Sections 254.098-254.120 reserved for expansion]

SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

Sec. 254.121. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a campaign treasurer of a specific-purpose committee must include:

(1) the committee's full name and address;

(2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;

(3) the identity and date of the election for which the report is filed, if applicable;

(4) the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes;

(5) the name of each officeholder assisted by the committee; and

(6) the amount of each political expenditure in the form of a political contribution that is made to a candidate, officeholder, or another political committee and that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned.

Sec. 254.122. INVOLVEMENT IN MORE THAN ONE ELECTION BY CERTAIN COMMITTEES. If a specific-purpose committee for supporting or opposing more than one candidate becomes involved in more than one election for which the reporting periods prescribed by Section 254.124 overlap, the reportable activity that occurs during the overlapping period is not required to be included in a report filed after the first report in which the activity is required to be reported.

Sec. 254.123. SEMIANNUAL REPORTING SCHEDULE FOR COMMITTEE. (a) The campaign treasurer of a specific-purpose committee shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Sec. 254.124. ADDITIONAL REPORTS OF COMMITTEE FOR SUPPORTING OR OPPOSING CANDIDATE OR MEASURE. (a) In addition to other required reports, for each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the committee's campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a specific-purpose committee that supports or opposes a candidate in an election and

an ensuing runoff election shall file one report for the runoff election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

Sec. 254.125. FINAL REPORT OF COMMITTEE FOR SUPPORTING OR OPPOSING CANDIDATE OR MEASURE. (a) If a specific-purpose committee for supporting or opposing a candidate or measure expects no reportable activity in connection with the election to occur after the period covered by a report filed under this subchapter, the committee's campaign treasurer may designate the report as a "final" report.

(b) The designation of a report as a final report:

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and

(2) terminates the committee's campaign treasurer appointment.

(c) If, after a committee's final report is filed, reportable activity with respect to the election occurs, the committee must file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to political committees. A report filed under this subsection may be designated as a final report.

Sec. 254.126. DISSOLUTION REPORT OF COMMITTEE FOR ASSISTING OFFICEHOLDER. (a) If a specific-purpose committee for assisting an officeholder expects no reportable activity to occur after the period covered by a report filed under this subchapter, the committee's campaign treasurer may designate the report as a "dissolution" report.

(b) The filing of a report designated as a dissolution report:

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the committee's campaign treasurer appointment.

(c) A dissolution report must contain an affidavit, executed by the committee's campaign treasurer, that states that all the committee's reportable activity has been reported.

Sec. 254.127. TERMINATION REPORT. (a) If the campaign treasurer appointment of a specific-purpose committee is terminated, the terminated campaign treasurer shall file a termination report.

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and a report for that period is filed as provided by this subchapter.

(c) The report covers the period beginning the day after the period covered by the last report required to be filed under this subchapter and continuing through the day the campaign treasurer appointment is terminated.

(d) The report shall be filed not later than the 10th day after the date the campaign treasurer appointment is terminated.

(e) Reportable activity contained in a termination report is not required to be included in any subsequent report of the committee that is filed under this subchapter. The period covered by the committee's first report filed under this subchapter after a termination report begins the day after the date the campaign treasurer appointment is terminated.

Sec. 254.128. NOTICE TO CANDIDATE AND OFFICEHOLDER OF CONTRIBUTIONS AND EXPENDITURES. (a) If a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs.

(b) The notice must include the full name and address of the political committee and its campaign treasurer and an indication that the committee is a specific-purpose committee.

(c) A campaign treasurer commits an offense if he fails to comply with this section. An offense under this section is a Class A misdemeanor.

Sec. 254.129. NOTICE OF CHANGE IN COMMITTEE STATUS. (a) If a specific-purpose committee changes its operation and becomes a general-purpose committee, the committee's campaign treasurer shall deliver written notice of the change in status to the authority with whom the specific-purpose committee's reports under this chapter are required to be filed.

(b) The notice shall be delivered not later than the next deadline for filing a report under this subchapter that:

(1) occurs after the change in status; and

(2) would be applicable to the political committee if the committee had not changed its status.

(c) The notice must indicate the filing authority with whom future filings are expected to be made.

(d) A campaign treasurer commits an offense if he fails to comply with this section. An offense under this section is a Class B misdemeanor.

Sec. 254.130. AUTHORITY WITH WHOM REPORTS FILED. Reports filed under this subchapter shall be filed with the authority with whom the political committee's campaign treasurer appointment is required to be filed.

[Sections 254.131-254.150 reserved for expansion]

SUBCHAPTER F. REPORTING BY GENERAL-PURPOSE COMMITTEE

Sec. 254.151. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a campaign treasurer of a general-purpose committee must include:

(1) the committee's full name and address;

(2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;

(3) the identity and date of the election for which the report is filed, if applicable;

(4) the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(5) the name of each identified officeholder or classification by party of officeholders assisted by the committee;

(6) the principal occupation of each person from whom political contributions that in the aggregate exceed $50 are accepted during the reporting period; and

(7) the amount of each political expenditure in the form of a political contribution made to a candidate, officeholder, or another political committee that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned.

Sec. 254.152. TIME FOR REPORTING CERTAIN EXPENDITURES. If a general-purpose committee makes a political expenditure in the form of a political contribution to another general-purpose committee or to an out-of-state political committee and the contributing committee does not intend that the contribution be used in connection with a particular election, the contributing committee shall include the expenditure in the first report required to be filed under this subchapter after the expenditure is made.

Sec. 254.153. SEMIANNUAL REPORTING SCHEDULE FOR COMMITTEE. (a) The campaign treasurer of a general-purpose committee shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Sec. 254.154. ADDITIONAL REPORTS OF COMMITTEE INVOLVED IN ELECTION. (a) In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a general-purpose committee becomes involved in an election after a reporting period prescribed by Subsection (b) or (c), the committee's campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a general-purpose committee involved in an election and an ensuing runoff election shall file one report for the runoff election. The runoff election report shall be filed not earlier than the 10th day or later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

Sec. 254.155. OPTION TO FILE MONTHLY; NOTICE. (a) As an alternative to filing reports under Sections 254.153 and 254.154, a general-purpose committee may file monthly reports.

(b) To be entitled to file monthly reports, the committee must deliver written notice of the committee's intent to file monthly to the secretary of state not earlier than January 1 or later than January 15 of the year in which the committee intends to file monthly. The notice for a committee formed after January 15 must be delivered at the time the committee's campaign treasurer appointment is filed.

(c) A committee that files monthly reports may revert to the regular filing schedule prescribed by Sections 254.153 and 254.154 by delivering written notice of the committee's intent not earlier than January 1 or later than January 15 of the year in which the committee intends to revert to the regular reporting schedule. The notice must include a report of all political contributions accepted and all political expenditures made that were not previously reported.

Sec. 254.156. CONTENTS OF MONTHLY REPORTS. Each monthly report filed under this subchapter must comply with Sections 254.031 and 254.151

except that the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is $10 in the aggregate.

Sec. 254.157. MONTHLY REPORTING SCHEDULE. (a) The campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the first day of the month following the period covered by the report.

(b) A monthly report covers the period beginning the 26th day of each month and continuing through the 25th day of the following month, except that the period covered by the first report begins January 1 and continues through January 25.

Sec. 254.158. EXCEPTION TO MONTHLY REPORTING SCHEDULE. If the campaign treasurer appointment of a general-purpose committee filing monthly reports is filed after January 1 of the year in which monthly reports are filed, the period covered by the first monthly report begins the day the appointment is filed and continues through the 25th day of the month in which the appointment is filed unless the appointment is filed the 25th or a succeeding day of the month. In that case, the period continues through the 25th day of the month following the month in which the appointment is filed.

Sec. 254.159. DISSOLUTION REPORT. If a general-purpose committee expects no reportable activity to occur after the period covered by a report filed under this subchapter, the report may be designated as a "dissolution" report as provided by Section 254.126 for a specific-purpose committee and has the same effect.

Sec. 254.160. TERMINATION REPORT. If the campaign treasurer appointment of a general-purpose committee is terminated, the campaign treasurer shall file a termination report as prescribed by Section 254.127 for a specific-purpose committee.

Sec. 254.161. NOTICE TO CANDIDATE AND OFFICEHOLDER OF CONTRIBUTIONS AND EXPENDITURES. If a general-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee.

Sec. 254.162. NOTICE OF CHANGE IN COMMITTEE STATUS. If a general-purpose committee changes its operation and becomes a specific-purpose committee, notice of the change in status shall be given to the secretary of state as provided by Section 254.129 for a specific-purpose committee.

Sec. 254.163. AUTHORITY WITH WHOM REPORTS FILED. Reports filed under this subchapter shall be filed with the secretary of state.

[Sections 254.164-254.180 reserved for expansion]

SUBCHAPTER G. MODIFIED REPORTING PROCEDURES; $500 MAXIMUM IN CONTRIBUTIONS OR EXPENDITURES

Sec. 254.181. MODIFIED REPORTING AUTHORIZED. (a) An opposed candidate or specific-purpose committee required to file reports under Subchapter C or E may file a report under this subchapter instead if the candidate or committee does not intend to accept political contributions that in the aggregate exceed $500 or to make political expenditures that in the aggregate exceed $500 in connection with the election.

(b) The amount of a filing fee paid by a candidate is excluded from the $500 maximum expenditure permitted under this section.

Sec. 254.182. DECLARATION OF INTENT REQUIRED. (a) To be entitled to file reports under this subchapter, an opposed candidate or specific-purpose committee must file with the campaign treasurer appointment a written declaration of intent not to exceed $500 in political contributions or political expenditures in the election.

(b) The declaration of intent must contain a statement that the candidate or committee understands that if the $500 maximum for contributions and

expenditures is exceeded, the candidate or committee is required to file reports under Subchapter C or E, as applicable.

Sec. 254.183. MAXIMUM EXCEEDED. (a) An opposed candidate or specific-purpose committee that exceeds $500 in political contributions or political expenditures in the election shall file reports as required by Subchapter C or E, as applicable.

(b) If a candidate or committee exceeds the $500 maximum after the filing deadline prescribed by Subchapter C or E for the first report required to be filed under the appropriate subchapter, the candidate or committee shall file a report not later than 48 hours after the maximum is exceeded.

(c) A report filed under Subsection (b) covers the period beginning the day the campaign treasurer appointment is filed and continuing through the day the maximum is exceeded.

(d) The reporting period for the next report filed by the candidate or committee begins on the day after the last day of the period covered by the report filed under Subsection (b).

Sec. 254.184. APPLICABILITY OF REGULAR REPORTING REQUIREMENTS. (a) Subchapter C or E, as applicable, applies to an opposed candidate or specific-purpose committee filing under this subchapter to the extent that the appropriate subchapter does not conflict with this subchapter.

(b) A candidate or committee filing under this subchapter is not required to file any reports of political contributions and political expenditures other than the semiannual reports required to be filed not later than July 15 and January 15.

[Sections 254.185-254.200 reserved for expansion]

SUBCHAPTER H. UNEXPENDED CONTRIBUTIONS

Sec. 254.201. ANNUAL REPORT OF UNEXPENDED CONTRIBUTIONS. (a) This section applies to:

(1) a former officeholder who has unexpended political contributions after filing the last report required to be filed by Subchapter D; or

(2) a person who was an unsuccessful candidate who has unexpended political contributions after filing the last report required to be filed by Subchapter C.

(b) A person covered by this section shall file an annual report for each year in which the person retains unexpended contributions.

Sec. 254.202. FILING OF REPORT; CONTENTS. (a) A person shall file the report required by Section 254.201 not earlier than January 1 or later than January 15 of each year following the year in which the person files a final report under this chapter.

(b) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

(1) the person's full name and address;

(2) the full name and address of each person to whom a payment from unexpended political contributions was made during the previous year;

(3) the date, amount, and purpose of each payment made under Subdivision (2);

(4) the total amount of unexpended political contributions as of December 31 of the previous year; and

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year.

Sec. 254.203. RETENTION OF CONTRIBUTIONS. (a) A person may not retain political contributions covered by this title, assets purchased with the contributions, or interest and other income earned on the contributions for more than six years after the date the person either ceases to be an officeholder or candidate or files a final statement under this chapter, whichever is later.

(b) If the person becomes an officeholder or candidate within the six-year period, the prohibition in Subsection (a) does not apply until the person again ceases to be an officeholder or candidate.

(c) A person who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 254.204. DISPOSITION OF UNEXPENDED CONTRIBUTIONS. (a) At the end of the six-year period prescribed by Section 254.203, the former officeholder or candidate shall remit any unexpended political contributions to one or more of the following:

(1) the political party with which the person was affiliated when the person's name last appeared on a ballot;

(2) a candidate or political committee;

(3) the comptroller of public accounts for deposit in the State Treasury;

(4) one or more persons from whom political contributions were received, in accordance with Subsection (d);

(5) a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes; or

(6) a public or private postsecondary educational institution or an institution of higher education as defined by Section 61.003(8), Education Code, solely for the purpose of assisting or creating a scholarship program.

(b) A person who disposes of unexpended political contributions under Subsection (a)(2) shall report each contribution as if he were a campaign treasurer of a specific-purpose committee.

(c) Political contributions disposed of under Subsection (a)(3) may be appropriated only for financing primary elections.

(d) The amount of political contributions disposed of under Subsection (a)(4) to one person may not exceed the aggregate amount accepted from that person during the last two years that the candidate or officeholder accepted contributions under this title.

Sec. 254.205. REPORT OF DISPOSITION OF UNEXPENDED CONTRIBUTIONS. (a) Not later than the 30th day after the date the six-year period prescribed by Section 254.203 ends, the person required to dispose of unexpended political contributions shall file a report of the disposition.

(b) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

(1) the person's full name and address;

(2) the full name and address of each person to whom a payment from unexpended political contributions is made; and

(3) the date and amount of each payment reported under Subdivision (2).

[Sections 254.206-254.230 reserved for expansion]

SUBCHAPTER I. CIVIL LIABILITY

Sec. 254.231. LIABILITY TO CANDIDATES. (a) A candidate or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part a campaign contribution or campaign expenditure as required by this chapter is liable for damages as provided by this section.

(b) Each opposing candidate whose name appears on the ballot is entitled to recover damages under this section.

(c) In this section, "damages" means:

(1) twice the amount not reported that is required to be reported; and

(2) reasonable attorney's fees incurred in the suit.

(d) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Sec. 254.232. LIABILITY TO STATE. A candidate, officeholder, or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part a political contribution or political expenditure as required by this chapter is liable in damages to the state in the amount of triple the amount not reported that is required to be reported.

CHAPTER 255. REGULATING POLITICAL ADVERTISING AND CAMPAIGN COMMUNICATIONS

CHAPTER 255. REGULATING POLITICAL ADVERTISING AND CAMPAIGN COMMUNICATIONS

Sec. 255.001. REQUIRED DISCLOSURE ON POLITICAL ADVERTISING. (a) A person may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising that does not indicate in the advertising:

(1) that it is political advertising;

(2) the full name of either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or the person that individual represents; and

(3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents.

(b) This section does not apply to tickets or invitations to political fund-raising events or to campaign buttons, pins, hats, or similar campaign materials.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 255.002. RATES FOR POLITICAL ADVERTISING. (a) The rate charged for political advertising by a radio or television station may not exceed:

(1) during the 45 days preceding a general or runoff primary election and during the 60 days preceding a general or special election, the broadcaster's lowest unit charge for advertising of the same class, for the same time, and for the same period; or

(2) at any time other than that specified by Subdivision (1), the amount charged other users for comparable use of the station.

(b) The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes.

(c) In determining amounts charged for comparable use, the amount and kind of space or time used, number of times used, frequency of use, type of advertising copy submitted, and any other relevant factors shall be considered.

(d) Discounts offered by a newspaper or magazine to its commercial advertisers shall be offered on equal terms to purchasers of political advertising from the newspaper or magazine.

(e) A person commits an offense if the person knowingly demands or receives or knowingly pays or offers to pay for political advertising more consideration than permitted by this section.

(f) An offense under this section is a Class C misdemeanor.

Sec. 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING. (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

(b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 255.004. TRUE SOURCE OF COMMUNICATION. (a) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source.

(b) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source.

(c) An offense under this section is a Class A misdemeanor.

Sec. 255.005. MISREPRESENTATION OF IDENTITY. (a) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents his identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication.

(b) An offense under this section is a Class A misdemeanor.

Sec. 255.006. MISLEADING USE OF OFFICE TITLE. (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he does not hold at the time the agreement is made.

(b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office he does not hold at the time the representation is made.

(c) A person other than an officeholder commits an offense if the person knowingly uses a representation of the Great Seal of Texas in political advertising.

(d) An offense under this section is a Class A misdemeanor.

CHAPTER 256. CITIZEN COMPLAINT

Sec. 256.001. CITIZEN COMPLAINT REFERRED TO PROSECUTING AUTHORITY
Sec. 256.002. NOTICE OF COMPLAINT TO ACCUSED
Sec. 256.003. RESPONSE TO COMPLAINT BY ACCUSED
Sec. 256.004. PRELIMINARY REVIEW BY SECRETARY OF STATE
Sec. 256.005. REFERRAL OF COMPLAINT TO PROSECUTING ATTORNEY
Sec. 256.006. AVAILABILITY OF ALTERNATIVE ENFORCEMENT PROCEDURES
Sec. 256.007. MALICIOUS COMPLAINT

CHAPTER 256. CITIZEN COMPLAINT

Sec. 256.001. CITIZEN COMPLAINT REFERRED TO PROSECUTING AUTHORITY. (a) If any person files a complaint with the secretary of state alleging one or more of the following violations of this title, the secretary shall act on the complaint as provided by this chapter:

(1) a violation of Section 253.031 in which the authority with whom the accused is required to file a campaign treasurer appointment is the secretary of state;

(2) a violation of Section 254.041 in which the report involved in the violation is required to be filed with the secretary of state; or

(3) the making or accepting of a political contribution or the making of a political expenditure in violation of this title by a person required to file reports with the secretary of state.

(b) To be effective for action under this chapter, a complaint must:

(1) be signed and sworn to by the complainant;

(2) state the name and residence address of the accused and identify the election involved, if any; and

(3) identify a violation specified by Subsection (a) and state facts indicating that the accused has committed the violation.

Sec. 256.002. NOTICE OF COMPLAINT TO ACCUSED. (a) On receipt of a complaint under this chapter, the secretary of state shall deliver written notice of the filing of the complaint, by registered or certified mail, restricted delivery, return receipt requested, to the person accused of the violation.

(b) The notice must include a statement informing the accused person of the deadline for filing a written response to the complaint.

(c) A copy of the complaint and a copy of this chapter shall be included with delivery of the notice.

Sec. 256.003. RESPONSE TO COMPLAINT BY ACCUSED. (a) A person accused of a violation in a complaint filed under this chapter may file a written response to the complaint with the secretary of state.

(b) The response must be filed on or before the 15th day after the date of mailing shown on the notice of the complaint.

Sec. 256.004. PRELIMINARY REVIEW BY SECRETARY OF STATE. On receipt of a complaint under this chapter, the secretary of state shall review the complaint to determine whether there is reasonable cause to suspect that the alleged violation occurred.

Sec. 256.005. REFERRAL OF COMPLAINT TO PROSECUTING ATTORNEY. (a) If, after reviewing a complaint filed under this chapter, the secretary of state determines that there is reasonable cause to suspect that the alleged violation occurred, the secretary shall promptly refer the complaint to the appropriate prosecuting attorney. The secretary shall deliver to the prosecuting attorney the accused's response to the complaint, if timely, and certified copies of other pertinent documents in the secretary's possession.

(b) If the alleged violation involves an election in which the accused is a candidate, a candidate's campaign treasurer, or the campaign treasurer of a political committee supporting or opposing a candidate, the secretary of state shall delay referral until the day after election day or, if an ensuing runoff involving the accused is held, until the day after runoff election day. However, if the election involved in the violation is a primary election and the accused is involved in the succeeding general election, the referral shall be delayed until the day after general election day.

(c) If the alleged violation is one for which the accused is subject to liability for damages to the state, the secretary of state shall promptly deliver to the attorney general a copy of each document delivered to the prosecuting attorney.

Sec. 256.006. AVAILABILITY OF ALTERNATIVE ENFORCEMENT PROCEDURES. Action taken under this chapter does not affect the availability of other procedures for investigation of violations and enforcement of this title.

Sec. 256.007. MALICIOUS COMPLAINT. (a) A person who maliciously and without reasonable cause files a complaint under this chapter is liable for damages incurred by the person against whom the complaint is filed.

(b) If a suit is filed pursuant to a complaint filed under this chapter, a suit for damages under this section may not be filed until the suit on the complaint has been disposed of.

[~~TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS~~

[~~CHAPTER 251. REGULATING POLITICAL FUNDS AND CAMPAIGNS~~

[Sec. ~~251.001. DEFINITIONS.~~ As used in this chapter

[~~(1) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:~~

[~~(A) Filing of application for a position on a ballot.~~

[~~(B) Filing of application for nomination by a convention.~~

[~~(C) Independent candidate's declaration of intent.~~

[~~(D) Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.~~

[~~(E) Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.~~

[~~(F) Solicitation of or acceptance of a contribution for use in a future election.~~

[~~(G) Seeking the nomination of an executive committee of a political party to fill a vacancy.~~

[~~(H) Filing of a designation of a campaign treasurer. The filing of a designation of a campaign treasurer does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution.~~

[~~(2) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.~~

[~~(3) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or association organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives, abstract and title insurance companies, and stock companies. However, any political committee whose only principal purpose is to accept contributions and to make expenditures, as defined in this section, shall not be deemed to be a corporation under the provisions of this chapter if such committee is incorporated for liability purposes only. Incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of this Code.~~

[~~(4) "Contribution" is defined as:~~

[~~(A) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election, providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election, or as~~

[~~(B) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision. "Contribution" does not include an honorarium to a public servant that is excluded from the application of penal sanction by Section 36.10(3) of the Penal Code.~~

[~~(5) "Expenditures" is defined as any payments made or obligations incurred:~~

[~~(A) by a candidate, or political committee, when such payments or obligations are involved in an election; or~~

[~~(B) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision.~~

["~~Involved in an election~~" has the same meaning as in (4) above.

[~~(6) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.~~

[~~(7) "Public office" is defined as any office created by or under authority of the laws of this state, that is filled by the voters.~~

[~~(8) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.~~

[~~(9) "District office" is defined as any public office of the state government, less than state-wide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.~~

[~~(10) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.~~

[~~(11) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.~~

[~~(12) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.~~

[~~(13) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.~~

[~~(14) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.~~

[~~(15) "Political committee" is defined as any group of persons:~~

[~~(A) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or~~

[~~(B) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.~~

[~~(16) "Specific purpose political committee" is defined as:~~

[(A) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable, or

[(B) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

[(17) "General purpose political committee" is defined as:

[(A) any political committee which accepts contributions and/or makes expenditures in support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or

[(B) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

[(18) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

[(A) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value, or

[(B) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

[The term does not include nonpolitical letterheads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Sec. 251.002. APPOINTMENT OF CAMPAIGN TREASURER. (a) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures as defined in Sections 251.001(4)(B) and (5)(B). Unexpended campaign contributions, as defined in Section 251.001(4)(A), which are lawfully accepted, may be used by an office-holder for expenditures in connection with the office pursuant to Section 251.001(5)(B). Notwithstanding the requirement set forth in Subsection (f)(1) of this section, any contribution as defined in Section 251.001(4)(B) that has been lawfully accepted prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

[(b)(1) Every candidate for nomination to or election to a state or district office and every specific purpose political committee in any such election or in an election involving a statewide or district measure and every general purpose political committee shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

[(2) Each specific purpose political committee in an election involving a state or district office or a statewide or district measure and each general purpose political committee may also designate an assistant campaign treasurer to act in the absence of the political committee's campaign treasurer. The written

~~appointment of the assistant campaign treasurer must be filed with the Secretary of State.~~

~~[(c) Every candidate for nomination to or election to a county office and every specific purpose political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.~~

~~[(d) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every specific purpose political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.~~

~~[(e) Any campaign treasurer or assistant campaign treasurer designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.~~

~~[(f)(1) Except as expressly permitted in this chapter, no contribution as defined in Section 251.001(4)(A) shall be accepted nor any expenditure, as defined in Section 251.001(5)(A), including the paying of any filing fee, made by an individual until he has filed the name of his campaign treasurer with the appropriate authority. No contribution shall be accepted nor any expenditure made by a political committee until it has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible for a candidate or specific purpose political committee to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropriate authority may be determined in accordance with Subsections (b), (c), and (d) of this Section.~~

~~[(2) It is unlawful for a political committee to make a contribution or an expenditure in support for or in opposition to a candidate for a state or district office in a primary or general election unless the committee's designation of campaign treasurer has been filed before the 30th day preceding the appropriate election day.~~

~~[(g) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.~~

~~[(h) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.~~

~~[(i) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.~~

~~[(j) A designation of a campaign treasurer or an assistant campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office properly addressed to the appropriate authority within the time limits applicable to such designation. The postmark will be prima facie evidence of the date that such statement was deposited with the post office. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer or assistant campaign treasurer with any authority.~~

~~[Sec. 251.003. CAMPAIGN CONTRIBUTIONS. (a) It shall be lawful for an individual not acting in concert with any other person to expend a sum in a campaign which shall not in the aggregate exceed $100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority~~

unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than $100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

[(b) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 251.001 only so long as he either is not compensated or reimbursed for same.

[(c) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

[(d) Except as expressly permitted by Subsections (a), (b), and (c) of this Section it shall be unlawful for any person, other than a candidate, his campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Subsections (a), (b), and (e) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

[(e)(1) It shall be lawful for a corporation or a labor organization to expend its own funds for the purpose of aiding or defeating a measure by making a contribution to a political committee that supports or opposes measures exclusively.

[(2) It shall be lawful for a corporation or labor organization, not acting in concert with any other person, to make direct expenditures from its own funds for the purpose of aiding or defeating a measure by complying with this Section as if the corporation or labor organization were an individual.

[Sec. 251.004. FORM OF CONTRIBUTION. It is unlawful for a person except a general purpose political committee to accept a single contribution from a person in the form of cash that exceeds $100.

[Sec. 251.005. RESTRICTION ON CONTRIBUTIONS TO CERTAIN OFFICE-HOLDERS DURING REGULAR SESSION. (a) It is unlawful for a person to make a contribution to a person who holds a state office or to a member of the legislature, or to a specific-purpose political committee that supports or assists a person who holds a state office or a member of the legislature, during a period beginning on the 30th day before the day a regular session of the legislature is convened and continuing through the day of final adjournment.

[(b) It is unlawful for a person who holds a state office, a member of the legislature, or a specific-purpose political committee that supports or assists either a person who holds a state office or a member of the legislature to accept a contribution during the period prescribed in Subsection (a) of this section.

[(c) This section does not apply to a contribution that was made and accepted with the intent that it be used in an election held or called during the period prescribed in Subsection (a) of this section in which the person accepting the contribution is a candidate if the contribution was made after the person has designated a campaign treasurer for the office sought and before the person was sworn in to that office.

[Sec. 251.006. STATE OFFICER-ELECT AND LEGISLATOR-ELECT CONSIDERED OFFICE-HOLDER. (a) For purposes of this chapter, a state officer-elect or a member-elect of the legislature is considered an office-holder beginning on the day after the day of the general or special election in which the officer-elect or member-elect was elected.

[(b) This section does not relieve the state officer-elect or the member-elect of any reporting responsibilities he may have as a candidate under Section 251.011.

[Sec. 251.007. PROHIBITION OF PERSONAL USE OF CONTRIBUTIONS. (a) A person who accepts a contribution as a candidate or

office-holder shall not convert such contributions to personal use except as authorized by the State Ethics Advisory Commission.

[(b) In this section, "personal use" means a use which primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include any payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a holder of public office including payment of rent, interest, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County.

[(c) This section applies only to contributions accepted on or after September 1, 1983.

[(d) A person who converts a contribution to his personal use in violation of this section is civilly liable to the State of Texas for an amount equal to the amount of the converted contribution plus reasonable court costs.

[Sec. 251.008. CIVIL REMEDY. (a) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

[(b) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

[(c) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Sec. 251.009. CRIMINAL PENALTY. Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Sec. 251.010. CORPORATIONS AND LABOR ORGANIZATIONS NOT TO CONTRIBUTE. (a) It is unlawful for any corporation, as defined in Section 251.001, to make a contribution or expenditure, as defined in Section 251.001, or any labor organization to make a contribution or expenditure, or for any candidate, office-holder, political committee, or other person to knowingly accept any contribution prohibited by this section except that a corporation or labor organization may make a contribution or expenditure for the purpose of aiding or defeating a measure in accordance with Section 251.003.

[(b) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

[(c) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate, provided, however, that nothing in this

section shall prevent the making of a loan or loans to any candidate, office-holder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families, nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families, or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

[(d) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

[(e) Any corporation or labor organization that violates Subsection (a), (b), or (c) of this section shall be guilty of a felony of the third degree.

[(f) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

[(g) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree.

[Sec. 251.011. RECORDS AND SWORN STATEMENT. (a) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

[(b) Each candidate whose name is printed on the ballot, each person who, after having become a candidate, has withdrawn as a candidate, each write-in candidate taking affirmative action in an election and each political committee

~~involved in an election concerning a candidate or measure shall file sworn statements as required herein. Each office-holder and political committee as defined in Section 251.001(15)(B), (16)(B), or (17)(B) shall file sworn statements as required herein.~~

~~[(c)(1) Each statement filed by a candidate, office-holder, political committee, or the political committee's campaign treasurer must list all contributions received and all expenditures made during the period covered by the statement as described in Subsection (i) of this section. Each statement must include, for the period covered, the following information:~~

~~[(A) the full name and complete address of each person from whom contributions in an aggregate amount of more than $50 were received, and the date and amount of the contributions;~~

~~[(B) the full name and complete address of each person to whom any expenditures aggregating more than $50 were made, and the date, amount, and purpose of the expenditures;~~

~~[(C) the full name and complete address of each person to whom a payment that is not an expenditure was made, if the payment was made from a contribution, and the date, amount, and purpose of the payment;~~

~~[(D) the full name and complete address of each person who assisted in obtaining credit or a loan of money for or on behalf of the candidate, office-holder, or political committee, or who guaranteed or otherwise agreed to assume any financial obligation for or on behalf of the candidate, office-holder, or political committee, if the benefit of the credit, the proceeds of the loan, or the guarantee or assumption of the obligation was to be involved, directly or indirectly, in an election, and the date and total value of the credit, loan, or guarantee or assumption;~~

~~[(E) a total of all contributions of $50 and less received and a total of all expenditures of $50 and less made;~~

~~[(F) a total of all contributions received and all expenditures made; and~~

~~[(G) the total of unexpended contributions received or the outstanding indebtedness from expenditures made as of the end of the period covered by the previous statement required to be filed under this section.~~

~~[(2) Each statement filed by a candidate or a political committee must include the campaign treasurer's name, business or residence street address, and telephone number.~~

~~[(3) Each statement filed by a general-purpose political committee or its campaign treasurer must include the principal occupation of each person from whom contributions in an aggregate amount of more than $50 were received in the period covered by the statement.~~

~~[(4) Each statement filed by a political committee or its campaign treasurer must include the amount of each expenditure in the form of a contribution made to a candidate, office-holder, or another political committee that was returned to the political committee during the period covered by the statement, the name of the person to whom the expenditure was originally made, and the date it was returned.~~

~~[(5) A contribution received but not accepted is not required to be reported pursuant to this section. A determination of whether to accept a contribution that is received by a candidate, office-holder, campaign treasurer, or assistant campaign treasurer shall be made before the end of the reporting period during which the contribution was received. If the determination on accepting the contribution is not made before that time, it is considered accepted on the last day of the reporting period for purposes of reporting pursuant to this section. The candidate, office-holder, campaign treasurer, or assistant campaign treasurer who~~

~~received a contribution that was not accepted shall return it to the contributor not later than the 30th day after the deadline for filing a statement for the reporting period during which the contribution was received. A candidate, office-holder, campaign treasurer, or assistant campaign treasurer commits a Class A misdemeanor if he knowingly fails to return a contribution as required by this subdivision.~~

~~[(6) For purposes of the time and manner of reporting, an expenditure need not be considered to have been made until the amount is readily determinable or, if the character of the expenditure is such that normal business practice is not to disclose the amount until the next periodic bill is received, then the expenditure need not be considered to have been made until the date of receipt of the bill.~~

~~[(d) In addition to the filing of a sworn statement under this section, the information required to be reported on the statement regarding contributions from a person that in the aggregate exceed $1,000 to an opposed candidate for the office of state senator or to a specific purpose political committee organized in support of or in opposition to any candidate for the office of state senator or $200 to an opposed candidate for the office of state representative or to a specific purpose political committee organized in support of or in opposition to any candidate for the office of state representative and that are knowingly accepted during the period beginning on the ninth day before election day and ending at 12:00 noon on the second day before election day shall be reported by such candidate or specific purpose political committee by telegram or delivered by hand to the secretary of state within 48 hours of acceptance.~~

~~[(e)(1) A general-purpose political committee must file a statement of organization with the secretary of state at the time it files the name of its campaign treasurer. The name of a general-purpose political committee may not be the same as, or deceptively similar to, the name of any other general-purpose political committee whose statement of organization is filed with the secretary of state. If there is a change in the information required to be included in the statement of organization, the political committee shall file an amended statement of organization with the secretary of state not later than the 30th day after the change occurs. The statement of organization must include the political committee's campaign treasurer's name, business or residence street address, and telephone number, and the following information:~~

~~[(A) the name of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the political committee, if applicable; or~~

~~[(B) the name of each person that determines to whom the political committee makes contributions or for what purposes the political committee makes expenditures.~~

~~[(2) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subdivision shall be guilty of a Class A misdemeanor.~~

~~[(3) In reporting a contribution received from a political committee not in this state, the information for the contributing committee that is required by~~

~~Subdivision (1) of this subsection shall be included unless a copy of the committee's statement of organization filed with the Federal Election Commission is filed under Subsection (h) of this section.~~

~~[(f) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:~~

~~["I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."~~

~~[(g) The statement and oath shall be filed as follows: for a county office, or a measure submitted at an election called by a county, with the county clerk of the county; for a district office or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State. The deadline for filing any statement required under this section is 5 p.m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Statutes, the deadline for filing is extended to 5 p.m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.~~

~~[(h) In the event a political committee has elected to comply with the provisions applicable to political committees within this state, the requirements of this paragraph shall not be applicable. A candidate, office-holder, or political committee shall not accept a contribution aggregating more than $500 in a reporting period from a political committee not in this state unless the contribution is accompanied by either: (1) a written statement which sets forth the full name and complete address of each person who contributed more than $100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee; or (2) a certified copy of the contributing political committee's statement of organization filed as required by law with the Federal Election Commission. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections outside of this state and federal offices not voted on in this state within the immediately preceding twelve-month period.~~

~~[(i)(1)(A) Candidates and the campaign treasurers of specific purpose political committees as defined in Section 251.001(16)(A) shall file sworn statements at the times required in Subdivision (4) of this subsection.~~

~~[(B)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in Section 251.001(16)(B) shall file sworn statements on or before July 15 and on or before January 15 of each year of all contributions received and all expenditures made during the six calendar months preceding the statements in accordance with the provisions of Subsection (c) of this~~

section but reporting only such contributions accepted and expenditures made that have not been previously reported.

[(ii) In addition to the statements required in Subsection (i)(1)(B)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to Subsection (i)(1)(A). The statements required by this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

[(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in Subdivision (5) of this subsection.

[(3) If the operations of a political committee necessitate a change in the applicability of Subdivision (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

[(4)(A) Every candidate and every specific purpose political committee shall file two sworn statements for each year in which the candidate or the specific purpose political committee is not involved in an election. The two sworn statements shall be filed on or before July 15 of each nonelection year and on or before January 15 following a nonelection year. The period reported in the first such statement begins on January 1 or the day of campaign treasurer designation, as applicable, and ends on and includes June 30. The period reported in the second such statement begins on July 1 and ends on and includes December 31.

[(B)(i) Every opposed candidate and every specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in Subdivision (4)(B)(iii) of this subsection. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. The period reported in the first such statement shall begin on the day of campaign treasurer designation or on the day after the end of the period covered by the last required statement, as applicable, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and end on and include the 10th day before the election. The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event an opposed candidate or a specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer or on the day after the end of the period covered by the last required statement, as applicable.

[(ii) In lieu of any third statement required by Subdivision (4)(B)(i) of this subsection, which falls on the 30th day after any general, primary, or special election, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose political committee shall file

~~a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.~~

~~[(iii) Each year after the last deadline for filing a statement of contributions and expenditures under Subdivision (4)(B)(i) of this subsection, an additional statement shall be filed, provided, however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (i)(1)(B) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.~~

~~[(C) Every unopposed candidate shall file two sworn statements during the year in which an election occurs in which the unopposed candidate is involved. The statements shall be filed on or before July 15 of the year in which the election occurs and on or before January 15 of the year following the election. The period reported in the first such statement begins on January 1 or the day of campaign treasurer designation, as applicable, and ends on and includes June 30. The period reported in the second such statement begins on July 1 and ends on and includes December 31.~~

~~[(5) All general purpose political committees shall file sworn statements as designated either in this subdivision or in Subdivision (6) of this subsection:~~

~~[(A) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;~~

~~[(B) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election which have not been previously reported;~~

~~[(C) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;~~

~~[(D) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;~~

~~[(E) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;~~

~~[(F) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.~~

[~~(6) In lieu of the sworn statements required under Subdivision (5) of this subsection, a general-purpose political committee may elect to file sworn monthly statements of all contributions received and all expenditures made which have not been previously reported by filing the sworn statements designated herein:~~

[~~(A) A notice of intent to file monthly statements shall be filed between January 1 and January 15 of the first year in which the committee intends to file monthly statements. However, a general purpose political committee formed after January 15 of any particular year may upon designation of its campaign treasurer file at the same time a notice of intent to file monthly statements pursuant to this paragraph. The filing remains effective until notice of intent to revert to the regular filing schedule is filed pursuant to Paragraph (C) of this subdivision.~~

[~~(B) On the first day of each calendar month, even if there has been no activity, a statement of all previously unreported contributions received and all previously unreported expenditures made through the 25th day of the preceding month. Any general purpose political committee filing under the procedures of this subdivision shall include in each statement the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than $10 has been received or borrowed during the reporting period. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than $10 were made during the appropriate reporting period and the purpose of such expenditures.~~

[~~(C) If a general purpose political committee electing to file sworn monthly statements wishes to revert to filing the sworn statements required under Subdivision (5) of this subsection, such committee must file its intent to do so between January 1 and January 15 in addition to a statement of all contributions received and expenditures made which have not previously been reported.~~

[~~(7) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, however, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.~~

[~~(8) Final Statement. A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such. Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.~~

[~~(9) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the January 15th annual statement.~~

[~~(10) In the event a campaign treasurer of a political committee is terminated, either voluntarily or by action of the political committee, he shall file a sworn statement no later than the 10th day after such termination, reporting all appropriate matters for the period from the end of the period reported in the preceding sworn statement through the day of his termination. Any subsequent sworn statement which is to be filed by a successor campaign treasurer need not~~

~~report those matters included in the previous campaign treasurer's termination statement.~~

~~[(j)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter, such person shall be guilty of a Class C misdemeanor.~~

~~[(2) Any candidate, office-holder, campaign treasurer, assistant campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Penal Code.~~

~~[(k) Any candidate or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.~~

~~[(l) Any candidate, office-holder, or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.~~

~~[(m) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.~~

~~[(n) No charge shall be levied for the filing of any report required by this section.~~

~~[(o) No charge greater than that authorized by the State Purchasing and General Services Commission for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.~~

~~[(p) A statement filed under this section shall be written in black ink or typed with black typewriter ribbon, on a form prescribed by the secretary of state, unless the statement is a computer printout.~~

~~[(q) An assistant campaign treasurer designated by a political committee under Section 251.002(b)(2) may perform any duties imposed on the political committee's campaign treasurer by this Section in the absence of the campaign treasurer.~~

~~[Sec. 251.012. ANNUAL REPORT OF UNEXPENDED CONTRIBUTIONS. (a) Each of the following persons shall file a sworn statement each year, even if there is no additional activity, for as long as the person retains unexpended contributions:~~

~~[(1) a former office-holder who has unexpended contributions after the filing of the last sworn statement required to be filed by Section 251.011; or~~

~~[(2) an unsuccessful candidate for public office who:~~

~~[(A) was opposed and has unexpended contributions after the filing of the last sworn statement required to be filed by Section 251.011; or~~

~~[(B) was unopposed and has unexpended contributions.~~

~~[(b) An annual statement filed pursuant to this section shall be filed between January 1 and January 15 of each year. The statement shall include the full name and complete address of each person to whom a payment is made from unexpended contributions and the date, amount, and purpose of the payment. The statement shall include the total amount of unexpended contributions at the end of the year and the amount of interest earned on the contributions during the calendar year.~~

The statement shall be filed with the same authority with whom the person was required to file sworn statements pursuant to Section 251.011. An unsuccessful unopposed candidate shall file the statement with the authority with whom an opposed candidate for that office is required to file.

[(c) The provisions of Section 251.011 pertaining to penalties, inspection, and charges apply to an annual statement filed pursuant to this section.

[(d) A person may retain contributions accepted under this chapter for six years after the person is no longer an office-holder or candidate, pending any future candidacy. If the person does not become a candidate within the six-year period, the person must dispose of any unexpended contributions in accordance with Subsection (e) of this section and must report the disposition by filing a sworn statement in accordance with this section not later than the 30th day after the end of the six-year period.

[(e) A person required to dispose of unexpended contributions under this section must transfer the funds as follows:

[(1) to the political party with which the person was affiliated when his name last appeared on the ballot;

[(2) to a candidate or a political committee;

[(3) to the general revenue fund;

[(4) to any person from whom contributions were received; or

[(5) to a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes; or

[(6) to a public or private postsecondary educational institution or an institution of higher education as defined in Section 61.003(7), Education Code, solely for the purpose of assisting or creating a scholarship program.

[(f) A person who disposes of unexpended contributions under Subsection (e)(2) of this section must report each contribution as if he were a specific purpose political committee.

[(g) Contributions disposed of under Subsection (e)(3) of this section may be appropriated only for the financing of political party primary elections.

[(h) The amount of contributions disposed of under Subsection (e)(4) of this section may not exceed the aggregate amount received from the person who made the contribution during the last two years that the candidate or officeholder accepted contributions pursuant to this chapter.

[Sec. 251.013. MODIFIED REPORTING PROCEDURE. (a) A candidate or political committee required by Section 251.011 to file sworn statements may file a sworn statement as provided by this section instead, if the candidate or political committee does not intend to accept contributions exceeding $500 or to make expenditures exceeding $500 in the election.

[(b) When designating a campaign treasurer, the candidate or political committee shall file a declaration of intent not to exceed $500 in contributions or expenditures with the authority with whom the candidate or political committee is required to file a designation of campaign treasurer. The declaration of intent must contain a statement that the candidate or political committee understands that if the $500 maximum for contributions or expenditures is exceeded, sworn statements must be filed in accordance with Section 251.011.

[(c) The candidate or political committee shall file a sworn statement not later than the 30th day after election day. The reporting period covered by the statement begins on the day of the campaign treasurer designation and ends on the 25th day after election day.

[(d) A candidate or political committee that exceeds the $500 maximum shall file sworn statements as required by Section 251.011. If a candidate or political committee exceeds the maximum after the filing deadline prescribed by Section 251.011 for the first sworn statement required to be filed under that section, the

candidate or political committee shall file a sworn statement not later than 48 hours after the maximum is exceeded. The reporting period covered by the statement begins on the day of the campaign treasurer designation and ends on the day the maximum is exceeded. The reporting period for the next sworn statement filed by the candidate or political committee begins on the day following the last day of the period covered by the first sworn statement.

[(e) The amount of a filing fee paid by a candidate is excluded from the $500 maximum expenditure permitted under this section.

[(f) Section 251.011 applies to a candidate or political committee filing in accordance with this section to the extent that Section 251.011 does not conflict with this section.

[Sec. 251.014. CIVIL PENALTY FOR LATE STATEMENT FILED WITH SECRETARY OF STATE. (a) The secretary of state shall determine from any available evidence whether a sworn statement required to be filed with him under Section 251.011 is late. On making that determination, the secretary shall immediately mail a notice of the determination to the person responsible for filing the statement and to the appropriate attorney for the state.

[(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the state for $100. The appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date the notice is mailed under Subsection (a) of this section. If the penalty is paid before the 10th day after the mailing, the secretary of state shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated.

[(c) A penalty paid voluntarily under this section shall be deposited to the credit of the general revenue fund.

[(d) This section is cumulative of any other available sanctions for late filings of sworn statements.

[(e) The prohibitions prescribed by Section 251.017(d) on the reporting by the secretary of state of alleged violations of this chapter while a candidate is engaged in campaign activities do not apply to the procedures for collecting a penalty under this section.

[Sec. 251.015. POLITICAL ADVERTISING. (a) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish, or broadcast any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name of the person who personally entered into the contract or transaction with the printer, publisher, or broadcaster, or the person represented by such agent and, in the case of advertising that is printed or published, the address of the agent or the person represented by the agent. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

[(b) Any advertising medium or any officer or agent thereof who wilfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than $100. No advertising medium may charge a rate for political advertising in excess of the following:

[~~(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;~~

[~~(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.~~

[~~(c) It is unlawful for an officer or employee of any political subdivision of this state to expend or authorize the expenditure of the funds of such political subdivision for the purpose of political advertising. The provisions of this subsection shall not apply to any advertising which describes the factual reasons for a measure and which does not advocate the passage or defeat of such measure.~~

[~~(d) It is the legislative intent to impose both civil and criminal responsibility on persons, corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.~~

[~~Sec. 251.016. CAMPAIGN COMMUNICATIONS. (a)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.~~

[~~(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.~~

[~~(b)(1) It is unlawful for any candidate for nomination or election to a public office to use the title of an office in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.~~

[~~(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which states, implies, or otherwise represents that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.~~

[~~(c) A violation of this section is a Class A misdemeanor.~~

[~~Sec. 251.017. REGULATION OF ILLEGAL ACTS; PROVIDING DUTIES FOR SECRETARY OF STATE. (a) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:~~

[~~(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.~~

~~[(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.~~

~~[(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.~~

~~[(4) Making or accepting an unlawful contribution or making an unlawful expenditure.~~

~~[(b) Form and contents of complaint. A complaint must:~~

~~[(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and~~

~~[(2) state the name of the person accused, the election involved, if any, and the alleged violation; and~~

~~[(3) allege facts indicating that the person accused has committed a violation.~~

~~[(c) Notice to the accused. Upon receipt of a complaint meeting the requirements of Subsections (a) and (b) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:~~

~~[(1) informing the person that the complaint has been filed;~~

~~[(2) attaching a copy of the complaint;~~

~~[(3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and~~

~~[(4) attaching a copy of this section.~~

~~[(d) Referral to prosecuting attorney and Attorney General.~~

~~[(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.~~

~~[(2) After a lapse of 25 days from the date of a notice pursuant to Subsection (c) or after a lapse of 25 days from an election described in (d)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.~~

~~[(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.~~

~~[(e) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Penal Code relating to the offense of perjury.~~

~~[(f) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.~~

~~[(g) Duties of Secretary of State.~~

~~[(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments required to be filed by this code, regardless of whether the~~

~~instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.~~

~~[(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.~~

~~[(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, office-holders, or political committees the forms provided by the Secretary of State.~~

~~[(4) It shall be the duty of the Secretary of State to interpret and administer the provisions of this Act in the exercise of his authority stated in Section 31.003 and to make such interpretations and administrative rulings available to any person upon request.~~

~~[(5) Not later than the fifth day before each applicable deadline, the Secretary of State shall notify each person responsible for filing sworn statements with the Secretary under Section 251.011 of the deadline for filing a statement.~~

~~[(6) After January 1 of each year, the Secretary of State shall submit to the Governor and members of the legislature a report with respect to the preceding calendar year containing:~~

~~[(A) each interpretation, ruling, or opinion issued under Subdivision (4) of this subsection;~~

~~[(B) a statement of each violation of this chapter that has been reported to the Secretary of State and referred to the appropriate official for prosecution;~~

~~[(C) a statement of any difficulties encountered in the administration of this chapter; and~~

~~[(D) any suggested legislation to conform this chapter to pertinent court decisions or interpretations, rulings, or opinions issued by the Secretary of State.~~

~~[(h) Review of sworn statements.~~

~~[(1) Periodically, the Secretary of State shall review the sworn statements filed with the Secretary under this chapter.~~

~~[(2) If the Secretary of State determines that a person has failed to comply with this chapter, the Secretary shall notify the person by certified mail of the determination of noncompliance.~~

~~[(3) The notice required by Subdivision (2) of this subsection shall include a statement that the person notified must take the action necessary to comply with this chapter not later than the 30th day after the date the notice was mailed.~~

~~[(4) The Secretary of State shall maintain a listing of those persons who fail to comply with Subdivision (3) of this subsection. The listing is open to public inspection.~~

~~[Sec. 251.018. INJUNCTIONS. The district courts of this state shall have jurisdiction to issue injunctions to enforce the provisions of this code upon application by any citizen of this state.~~

~~[Sec. 251.019. VENUE FOR OFFENSES. Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.]~~

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

(2) Amend the caption to conform to the body of the bill.

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1818 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1818** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 43

Senator Brown called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 43** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 43** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chairman; Lyon, Santiesteban, Sims and Henderson.

HOUSE BILL 2124 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2124, Relating to the permit application for a solid waste disposal facility or an injection well and the powers and duties of the state agencies with jurisdiction over those permits.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Amend **H.B. 2124** by striking the word "apparent" from line 26 of page 4 and by striking the word "apparent" from line 7 of page 9.

The committee amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to the bill:

Amend **H.B. 2124** by inserting the following as Section 10 and renumbering the following Sections accordingly:

Amend Paragraph 6, Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding the following to the end of that paragraph:

In accordance with legislative intent that the existing unified statewide hazardous waste management program be protected, any local regulation or ordinance

affecting hazardous waste management is effective only to the extent that the regulation or ordinance does not conflict with the siting, construction or operation of such facilities and activities. Notwithstanding anything to the contrary previously stated in this Act, this section applies to all injection wells and solid waste management facilities regardless of time of submission of their applications.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2124 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2124** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 237, In Memory of Former State Representative Steve Burgess.

H.B. 2614, Relating to the issuance of a certificate to operate a horse-drawn carriage for hire; providing a criminal penalty.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 229**: Haley, Chairman; Guerrero, Tallas, Hollowell and A. Luna.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 390 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 390, Relating to exemption from the requirement that drivers have certain automobile liability insurance before operating a motor vehicle in Texas.

The bill was read second time.

Senator Uribe offered the following committee amendment to the bill:

Amend **H.B. 390** on page 2, line 6, by deleting the word: bond.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Uribe and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 390 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 390** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2107 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2107, Relating to the disposition of fees assessed for certain services performed by a peace officer and the amount and collection of certain other fees assessed by certain counties.

The bill was read second time.

Senator Green offered the following committee amendment to the bill:

Amend **H.B. 2107** by striking and adding the following:

line 16 strike $35 and substitute $20
line 3 strike $35 and substitute $20

Amend **H.B. 2107** on page 3, by striking lines 6-14 and substituting the following:

(e) A fee under Subsection (a)(1) of this article shall be assessed on conviction of an offense for which the defendant was arrested. However, only one fee may be assessed for an arrest regardless of the number of offenses for which the arrest was made. For the purposes of this article, the term "arrest" does not include the issuance by a peace officer of a written notice to appear in court, following the defendant's alleged violation of a traffic law or municipal ordinance.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2107 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2107** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

VOTE ON FINAL PASSAGE OF HOUSE BILL 65 RECONSIDERED

On motion of Senator Washington and by unanimous consent, the vote by which **H.B. 65** was finally passed was reconsidered.

Question - Shall **H.B. 65** be finally passed?

HOUSE BILL 65 ON THIRD READING

The Presiding Officer laid before the Senate on its third reading and final passage:

H.B. 65, Relating to the peremptory challenge of prospective jurors on racial grounds.

Senator Washington offered the following amendment to the bill:

Amend **H.B. 65** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 35, Code of Criminal Procedure, is amended by adding Article 35.261 to read as follows:

Art. 35.261. PEREMPTORY CHALLENGES BASED ON RACE PROHIBITED. (a) After the parties have delivered their lists to the clerk under Article 35.26 of this code and before the court has impanelled the jury, the defendant may request the court to dismiss the array and call a new array in the case. The court shall grant the motion of a defendant for dismissal of the array if the court determines that the defendant is a member of an identifiable racial group, that the attorney representing the state exercised peremptory challenges for the purpose of excluding persons from the jury on the basis of their race, and that the defendant has offered evidence of relevant facts that tend to show that challenges made by the attorney representing the state were made for reasons based on race. If the defendant establishes a prima facie case, the burden then shifts to the attorney representing the state to give a racially neutral explanation for the challenges. The burden of persuasion remains with the defendant to establish purposeful discrimination.

(b) If the court determines that the attorney representing the state challenged prospective jurors on the basis of race, the court shall call a new array in the case.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and by unanimous consent was adopted viva voce vote.

On motion of Senator Washington and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed.

CONFERENCE COMMITTEE ON HOUSE BILL 1183

Senator Edwards called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1183** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1183** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Barrientos, Glasgow, Santiesteban and Sarpalius.

COMMITTEE SUBSTITUTE HOUSE BILL 2320 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2320, Relating to the assumption of the risk by certain plaintiffs in civil actions.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2320 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2320** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 384 ON SECOND READING

Senator Brooks asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 384, Relating to the regulation of certain crane operators; providing penalties.

There was objection.

Senator Brooks then moved to suspend the regular order of business and take up **H.B. 384** for consideration at this time.

The motion prevailed by the following vote: Yeas 18, Nays 8.

Yeas: Anderson, Armbrister, Barrientos, Brooks, Edwards, Farabee, Glasgow, Green, Johnson, Leedom, McFarland, Montford, Sarpalius, Tejeda, Truan, Uribe, Washington, Zaffirini.

Nays: Blake, Brown, Harris, Henderson, Jones, Krier, Sims, Whitmire.

Absent: Caperton, Lyon, Parker, Parmer, Santiesteban.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **H.B. 384** in the following manner:

1. Amend Section 9, Subsection (5)(c) by changing the period at the end of the subsection to a comma and adding thereto the following:

"either at the time of the effective date of this Act or subsequently".

2. Strike Section 10 in its entirety and renumber subsequent sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator McFarland asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 384 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 384** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 6. (Not receiving four-fifths vote of Members present)

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Green, Harris, Henderson, Johnson, McFarland, Montford, Parker, Parmer, Sarpalius, Tejeda, Truan, Uribe, Zaffirini.

Nays: Brown, Jones, Krier, Leedom, Washington, Whitmire.

Absent: Glasgow, Lyon, Santiesteban, Sims.

HOUSE BILL 102 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 102** be placed on its third reading and final passage:

H.B. 102, Relating to the recruitment of women and ethnic minorities into programs of engineering and science at institutions of higher education.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time.

Senator Edwards offered the following amendment to the bill:

Amend **H.B. 102** by striking all language below the enacting clause and substituting the following language in lieu of:

SECTION 1. Chapter 51, Education Code, as amended, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. ENGINEERING AND SCIENCE RECRUITMENT FUND

Sec. 51.601. FINDINGS AND PURPOSE. The legislature finds that women and members of racial and ethnic minorities are underrepresented in programs of engineering and science at institutions of higher education located in the State of Texas; that a shortage of engineers and scientists exists in the State of Texas; and that it is in the public interest of the state to support recruitment of women and members of ethnic minorities into engineering and science programs. The purpose of this subchapter is to establish a framework to support the recruitment of women and members of ethnic minorities into engineering and science programs.

Sec. 51.602. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of education.

(2) "Coordinating board" means the Coordinating Board, Texas College and University System, or its successor.

(3) "Fund" means the engineering and science recruitment fund.

(4) "Contributions" means gifts, grants, donations, and the market value of in-kind contributions from public and private entities including the federal government, but excluding state appropriations.

(5) "Institutions of higher education" means public institutions of higher education as defined by Subdivision (8) of Section 61.003 of the Education Code and private institutions eligible to issue degrees in the state, as defined in the same manner.

Sec. 51.603. FUND. (a) The engineering and science recruitment fund is created as a special fund in the State Treasury.

(b) The fund consists of:

(1) appropriations; and

(2) grants from the federal government.

(c) For each biennium the legislature may appropriate to the fund an amount not to exceed the amount of contributions received by eligible programs during the preceding biennium.

(d) The commissioner shall administer the fund in accordance with the rules of the State Board of Education.

(e) The commissioner may accept federal grants for the purposes of the fund.

Sec. 51.604. USE OF FUND. The commissioner shall allocate the fund to eligible nonprofit organizations for the purpose of:

(1) establishing or operating educational programs that assist women or minority group members in preparing for or participating in programs leading to an undergraduate degree in engineering or science from an institution of higher education; and

(2) disseminating information concerning:

(A) educational and career opportunities in engineering and science; and

(B) the fund and programs funded under this subchapter.

(3) Exercise of the authority and powers granted in this subchapter is hereby declared to be a public and governmental function, exercised for a public purpose and a matter of public necessity.

Sec. 51.605. FUND ALLOCATION. (a) The commissioner shall allocate the fund in accordance with guidelines adopted by the State Board of Education. The guidelines must ensure that programs approved for funding:

(1) use professional volunteers at each level of instruction;

(2) require parental involvement;

(3) coordinate with public school preparation for scientific and mathematical careers;

(4) coordinate with postsecondary educational institutions;

(5) involve organizations of women and minority group members;

(6) provide demonstrated professional leadership in educational activities for women and minority group members; and

(7) are compatible with state and federal laws governing education.

(b) The commissioner shall allocate the fund as follows:

(1) the commissioner shall first allocate available funds to provide to each eligible program an amount equal to, at most, 50 percent of the amount of contributions the program received during the preceding fiscal year, as certified by the chief executive officer of the institution applying for the funds and verified by the commissioner;

(2) after all grants have been made under Subdivision (1) of this subsection for which applications have been received by a date set by rule of the board, the commissioner may allocate funds for the establishment or continued operation of eligible programs that have not received contributions; and

(3) the commissioner may allocate any amount remaining in the fund on January 1 of each year among the institutions receiving grants under Subdivision (1) of this subsection in proportion to each program's share of the total amount allocated under that subdivision.

(c) Preference shall be given to programs that stress the development of mathematical and scientific competence.

(d) In making allocations, the commissioner may solicit advice from public or private organizations working for the recruitment of women or minority group members into engineering and science careers.

(e) The comptroller shall issue warrants drawn on the fund on receipt of vouchers approved by the commissioner.

(f) The State Board of Education shall adopt rules establishing procedures by which an entity must apply for funding and account for any funds received.

Sec. 51.606. ELIGIBLE PROGRAMS. (a) To be eligible to receive funds under this subchapter, a program must:

(1) be operated by an organization that:

(A) qualifies for exemption from federal income tax under Section 501, Internal Revenue Code; and

(B) does not distribute net earnings to any private shareholder or other individual; and

(2) accepts at least 70 percent women and minority group students.

(b) The coordinating board shall determine on an annual basis which groups meet the requirements set out in Subdivision (2) of Subsection (a) of this section and shall certify that determination to the commissioner of education.

Sec. 51.607. ADVISORY COMMITTEE. (a) The Minority Recruitment Advisory Committee is established to advise the commissioner on an annual basis of the eligibility of each program funded under this subchapter.

(b) The initial committee shall be composed of three designees of the commissioner of education.

(c) In addition, the committee members shall include the chairman of the House Higher Education Committee or his designee and the chairman of the Senate Education Committee or his designee.

(d) The committee members serve terms of two years. The terms of office for the committee shall commence on the effective date of this Act. All committee members are eligible for reappointment to consecutive terms.

Sec. 51.608. PROGRAM REVIEW. Each eligible program receiving funds under this subchapter shall prepare an annual report giving an account of the use of the funds and including an educational progress report of the program participants.

SECTION 2. Subchapter L, Chapter 51, Education Code, as added by Chapter 647, Acts of the 69th Legislature, Regular Session, 1985, is redesignated as Subchapter N of that chapter, and the subchapter heading is amended to read as follows:

SUBCHAPTER N [L]. PARTNERSHIPS BETWEEN COMMUNITY/JUNIOR COLLEGES AND UPPER-LEVEL UNIVERSITIES OR CENTERS

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and by unanimous consent was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 31, Nays 0.

(Senator McFarland in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1058, Relating to gifts, grants, and donations made to the Texas Department of Mental Health and Mental Retardation or on behalf of a facility operated by the department.

S.B. 1, Relating to the admissibility of evidence seized pursuant to a governmental action.

S.B. 581, Relating to unclaimed property.

S.B. 1265, Relating to voting by and the cancellation of the voter registrations of persons whose names appear on the lists of returned registration certificates.

S.B. 543, Relating to reporting of postsecondary academic performance to high schools.

S.B. 403, Relating to sanctions that may be ordered by the State Board of Insurance.

S.B. 120, Relating to the definition of the term "intoxicated" for purposes of the prosecution of the offense of involuntary manslaughter involving the use of a motor vehicle.

S.B. 269, Adopting the Texas Theft Liability Act.

S.B. 1453, Relating to the boundaries of the Edwards Underground Water District.

S.B. 233, Relating to the county courts at law of Potter County.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT
SENATE BILL 257

Senator Farabee submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 257** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FARABEE	GIBSON
BROOKS	C. EVANS
ZAFFIRINI	GLOSSBRENNER
EDWARDS	GUERRERO
McFARLAND	MADLA
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, composition, powers, and duties of the Texas Department of Mental Health and Mental Retardation and to the provision of mental health and mental retardation and related services; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. Section 1.01, Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.01. PURPOSE AND POLICY. (a) It is the purpose of this Act to provide for [~~the conservation and restoration of mental health among the people of this state, and toward this end to provide for~~] the effective administration and coordination of mental health services at the state and local levels[~~, and to provide, coordinate, develop, and improve services for the mentally retarded persons of this state to the end that they will be afforded the opportunity to develop their respective mental capacities to the fullest practicable extent and to live as useful and productive lives as possible~~].

(b) It is the goal of the state to provide a comprehensive range of services for mentally ill and mentally retarded persons who are in need of publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with the services and programs provided by other governmental entities to minimize duplication and to share with other

governmental entities in financing those services and programs [~~The legislature declares that the public policy of this state is to encourage local agencies and private organizations to assume responsibility for the effective administration of mental health and mental retardation services, with the assistance, cooperation, and support of the Texas Department of Mental Health and Mental Retardation created by this Act~~].

(c) Recognizing that there exists a variety of alternatives for serving the mentally disabled, it is the purpose of this Act to provide for a continuum of services. The continuum of services shall include facilities operated by the Texas Department of Mental Health and Mental Retardation, as well as community services provided by the department and other entities through contracts with the department. It [~~and it~~] is the policy of this state that when appropriate and feasible, mentally ill and mentally retarded persons shall be afforded treatment in their own communities.

(d) The public policy of this state is that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The Texas Department of Mental Health and Mental Retardation will assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department will provide state-administered mental health and mental retardation services and provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(e) It is also the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and mental retardation services may be expended only to provide services to the priority populations identified in the department's long-range plan.

SECTION 1.02. (a) Section 1.02(7), Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) "Mental retardation services" includes all services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, habilitation [~~rehabilitation~~], care, treatment, supervision, and control of mentally retarded persons, except the education of school-age individuals that the public educational system is authorized to provide.

(b) Section 1.02(7), Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), as amended by this section, takes effect September 1, 1988.

SECTION 1.03. Section 1.02, Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), is amended by amending Subdivision (10) and by adding Subdivisions (11) through (16) to read as follows:

(10) "Medical Director" means the Medical Director of the Texas Department of Mental Health and Mental Retardation, [~~"Director of Operations" means the director~~] appointed under Section 2.07 of this Act.

(11) "Community center" means a center established under Article 3 of this Act.

(12) "ICF-MR" means the medical assistance program serving mentally retarded persons receiving care in intermediate care facilities.

(13) "Local mental health authority" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to mentally ill persons in a local service area.

(14) "Local mental retardation authority" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to mentally retarded persons in a local service area.

(15) "Priority client population" means those groups of mentally ill or mentally retarded persons identified by the department as being most in need of mental health or mental retardation services.

(16) "State school" means a state-supported and structured residential facility operated by the department to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

SECTION 1.04. Sections 2.01, 2.01A, and 2.01B, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.01. COMPOSITION OF DEPARTMENT. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a Medical Director [~~Director of Operations, a Deputy Commissioner for Management and Support~~], a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, [~~an Executive Deputy Commissioner,~~] a staff under the direction of the Commissioner, Medical Director [~~the Director of Operations~~], and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

(1) the Central Office of the Department;
(2) the Austin State Hospital;
(3) the San Antonio State Hospital;
(4) the Terrell State Hospital;
(5) the Wichita Falls State Hospital;
(6) the Rusk State Hospital;
(7) the Big Spring State Hospital;
(8) the Kerrville State Hospital;
(9) the Vernon State Hospital;
(10) the Austin State School;
(11) the Travis State School;
(12) the Mexia State School;
(13) the Abilene State School;
(14) the Lufkin State School;
(15) the Richmond State School;
(16) the Denton State School;
(17) the Corpus Christi State School;
(18) the Lubbock State School;
(19) the Brenham State School;
(20) the Fort Worth State School;
(21) the San Antonio State School;
(22) the San Angelo State School;
(23) the Harris County Psychiatric Center [~~Texas Research Institute of Mental Sciences~~];
(24) the Beaumont State Center;
(25) the Amarillo State Center;
(26) the El Paso State Center;
(27) the Rio Grande State Center;
(28) the Laredo State Center;
(29) the Waco Center for Youth;
(30) the Leander Rehabilitation Center.

Sec. 2.01A. EMPLOYEES [~~AND SALARIES~~]. (a) The Commissioner shall develop an intra-agency career ladder program one part of which shall require the intra-agency posting concurrently with any public posting of all nonentry level

positions [~~number of employees and the salaries shall be as fixed in the general appropriations bill~~].

(b) The Commissioner or the Commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity by which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the Department's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to address appropriately areas of significant underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance.

(c) The policy statement required by Subsection (b) of this section shall be filed with the Governor's office not later than November 1, 1987, cover an annual period, and be updated at least annually. The Governor's office shall develop a biennial report to the Legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the Legislature.

(d) Not later than November 1, 1988, the Department shall prepare and submit to the Board a report documenting the impact of its efforts to reduce any underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance. The report shall also include:

(1) information on the number of complaints of employment discrimination filed against the Department with the Texas Commission on Human Rights in fiscal years 1986, 1987, and 1988;

(2) the nature of the complaints;

(3) the facilities or offices involved in the complaints; and

(4) the current status of the complaints.

(e) Not later than January 1, 1989, the Board shall submit copies of the report required in Subsection (d) of this section to the Texas Commission on Human Rights and to the appropriate committees of the House and Senate.

(f) The Board shall adopt policies that clearly define the respective responsibilities of the Board and the staff of the Department.

(g) The Department shall inform its members and employees as often as is necessary of:

(1) the qualifications for office or employment prescribed by this Act; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(h) The Commissioner shall develop a system under which the job performance of Department employees is evaluated annually. All merit pay for Department employees must be based on the system established under this subsection.

Sec. 2.01B. APPLICATION OF SUNSET ACT. The Texas Department of Mental Health and Mental Retardation is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the Department [~~department~~] is abolished and this article expires September 1, 1999 [~~1987~~].

SECTION 1.05. (a) Sections 2.02 and 2.03, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.02. MEMBERS OF BOARD. (a) The Board consists of nine members appointed by the Governor with the advice and consent of the Senate.

(b) The members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by the Department or receiving funds from the Department; or

(2) uses or receives a substantial amount of tangible goods, services, or funds from the Department, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses, or other than as a parent or guardian of a client or patient receiving services from the Department.

(c) Appointments to the Board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 2.03. TERMS OF OFFICE. [~~(a)~~] Each member holds office for a term of six years and until his successor is appointed and qualified.

[~~(b) Three of the first nine members appointed by the Governor shall serve terms expiring on January 31, 1967; three shall serve terms expiring on January 31, 1969; and three shall serve terms expiring on January 31, 1971.~~]

(b) A member of the Texas Board of Mental Health and Mental Retardation who is serving a term as a member on August 31, 1987, is not required to have, during that term or during any subsequent and consecutive term, the public membership qualifications required by Section 2.02, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as amended by this section. The member is not subject to removal for the failure to have such a qualification.

SECTION 1.06. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.02A and 2.03A to read as follows:

Sec. 2.02A. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the Department, may not serve as a member of the Board or act as the general counsel to the Department.

(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the Board or an employee of the Department.

(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the Board and may not be an employee of the Department, including an employee exempt from the state's classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Sec. 2.03A. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section 2.02(b) of this Act for appointment to the Board;

(2) does not maintain during the member's service on the Board the qualifications required by Section 2.02(b) of this Act for appointment to the Board;

(3) violates a prohibition established by Section 2.02A of this Act;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled Board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the Board.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(c) If the Commissioner has knowledge that a potential ground for removal exists, the Commissioner shall notify the Chairman of the Board of the ground. The Chairman of the Board shall then notify the Governor that a potential ground for removal exists.

(b) A member of the Texas Board of Mental Health and Mental Retardation who is serving a term as a member on August 31, 1987, is not required to have, during that term or any subsequent and consecutive term, the membership qualifications required by Section 2.02A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The member is not subject to removal for the failure to have such a qualification.

SECTION 1.07. Section 2.05, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The Board shall adopt policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

SECTION 1.08. Section 2.07, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. COMMISSIONER AND MEDICAL DIRECTOR [~~DIRECTOR OF OPERATIONS~~]. (a) The Board shall appoint a qualified person to serve as Commissioner.

(b) The Commissioner shall, subject to Board approval, appoint a qualified person to serve as Medical Director [~~of Operations~~].

(c) To be qualified for the office of Commissioner, a person must have professional training and experience in the administration or management of comprehensive health care or human service operations and must have demonstrated proven administrative and management ability preferably in the health care area [~~be a physician licensed to practice in this state and must have proven administrative experience and ability~~].

(d) To be qualified for appointment as Medical Director [~~of Operations~~], a person must be a physician licensed to practice in this state and must have proven administrative experience and ability in comprehensive health care or human service operations [~~have professional training and experience and demonstrate proven administrative and management ability, preferably in the health care area~~].

(e) The Commissioner is responsible for the administration of the Department and for[~~. Except for the administration of the medical and other programmatic functions, the Director of Operations is responsible for assisting the Commissioner in~~] assuring the effectual and efficient administration of the Department. The Medical Director reports to the Commissioner and is responsible for the quality and appropriateness of services by developing policies relating to clinical services regulated by the Department and those delivered in Department facilities or under contract to the Department and directing the standards and quality assurance program, a utilization review program, a physician recruitment and retention program, and a peer review program for physicians and other clinical staff employed by or under contract to the Department.

(f) The Commissioner holds office at the pleasure of the Board.

(g) The Commissioner is designated as the state mental health authority and the state mental retardation authority.

SECTION 1.09. Section 2.08(b), Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) To be qualified for appointment as Deputy Commissioner for Mental Health Services, a person must be a physician licensed to practice in this state, must have completed a three-year residency in psychiatry approved by the American Board of Psychiatry and Neurology, and must have proven administrative abilities in mental health services [~~have at least three years of specialized training in psychiatry~~]. This subsection applies to any Deputy Commissioner for Mental Health Services appointed after September 1, 1987.

SECTION 1.10. Section 2.08A(a), Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Department [~~board~~] shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Department [~~board~~] during the preceding fiscal year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

SECTION 1.11. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.08B and 2.09 to read as follows:

Sec. 2.08B. AUDITS. (a) The State Auditor shall audit the financial transactions of the Department at least once during each biennium.

(b) The director of the internal audit unit shall report directly to the Commissioner.

(c) Each audit report shall be submitted directly to the Board.

Sec. 2.09. PUBLIC INFORMATION AND COMPLAINTS. (a) The Department shall prepare information of public interest describing the functions of the Department and describing the procedures by which complaints are filed with and resolved by the Department. The Department shall make the information available to the general public and appropriate state agencies.

(b) The Board by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the Department for the purpose of directing complaints to the Department. The Board may provide for the notification through inclusion of the information:

(1) on each registration form, application, or written contract for services of an entity regulated under this Act or of an entity the creation of which is authorized by this Act;

(2) on a sign that is prominently displayed in the place of business of each entity regulated under this Act or of each entity the creation of which is authorized by this Act; or

(3) in a bill for service provided by an entity regulated under this Act or by an entity the creation of which is authorized by this Act.

(c) If a written complaint is filed with the Department that relates to an entity regulated by the Department, the Department, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the Department of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The Department shall keep an information file about each complaint filed with the Department that relates to an entity regulated by the Department.

SECTION 1.12. Sections 2.12(c) and (d), Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The Commissioner shall, with the approval of the Board, appoint the head of each facility [~~or institution~~] that is administered by the Department. The person appointed as head of a facility [~~or institution~~] serves at the pleasure of the Commissioner.

(d) The Commissioner shall establish, for key departmental personnel [~~who are subject to Board approval~~], qualifications which balance clinical and programmatic knowledge and management experience.

SECTION 1.13. Section 2.24, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.24. APPLICATION OF HEALTH PLANNING ACT [~~CERTIFICATE OF NEED REQUIREMENT~~]. The acquisition, development, construction, modification, and expansion of facilities, provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes)[~~, including requirements for a certificate of need or an exemption certificate~~].

ARTICLE 2

SECTION 2.01. Section 2.10, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.10. ADVISORY COMMITTEES. The Board shall appoint a medical advisory committee[~~, a citizens' planning advisory committee,~~] and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department. [~~The citizens' planning advisory committee shall advise the Department on all stages of the development and implementation of the Department's long-range strategic plan.~~] The Department may reimburse [~~pay~~] the members of any such committees [~~and the members of any advisory committees, the creation of which is approved by the Board,~~] for travel costs incurred in connection with the exercise of their duties for the Department at rates authorized to be paid to state officers and employees under the provisions of the General Appropriations Act.

SECTION 2.02. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.10A to read as follows:

Sec. 2.10A. CITIZENS' PLANNING ADVISORY COMMITTEE. (a) The Board shall appoint a nine-member citizens' planning advisory committee.

(b) The Board shall appoint:

(1) three persons who have demonstrated an interest in and knowledge of the Department system and the legal, political, and economic environment in which the Department operates;

(2) three persons who have expertise in the development and implementation of long-range plans; and

(3) three members of the general public.

(c) In addition to the requirements of Subsection (b) of this section, at least one member must be a consumer of services for the mentally ill or a family member of a consumer of services for the mentally ill, and at least one member must be a consumer of services for the mentally retarded or a family member of a consumer of services for the mentally retarded.

(d) The committee shall:

(1) advise the Department on all stages of the development and implementation of the long-range plan required by Section 2.12B of this Act;

(2) review the development, implementation, and any necessary revisions of the long-range plan;

(3) review the Department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and

(4) advise the Board on:

(A) the appropriateness of the long-range plan;

(B) any identified problems related to the implementation of the plan;

(C) any necessary revisions to the plan; and

(D) the adequacy of the Department's budget request.

(e) The Board shall review the committee's reports in conjunction with information provided by the Department on the long-range plan or the biennial budget request.

(f) The Board shall allow the committee opportunities to appear before the Board as needed.

(g) Before a Board meeting relating to the development, implementation, or revision of the Department's long-range plan, the Department shall, in a timely manner, provide the committee with any information that will be presented to the Board.

(h) Before submitting the Department's biennial budget request to the Board for discussion or approval, the Department shall, in a timely manner, provide the committee with a copy of the budget request.

(i) The Department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(j) The committee shall provide copies of its reports to the Board, the Governor, Lieutenant Governor, Speaker of the House, and the appropriate legislative committees.

SECTION 2.03. Sections 2.12A(a) and (c), Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Every two years, the [~~The~~] commissioner shall, consistent with the purposes and policies of this Act, determine for persons exhibiting the various forms of mental disability the types of services for the mentally disabled that can be most economically and effectively delivered at the community level and those mental health services that can be most economically and effectively delivered by the facilities of the Department [~~department~~]. This determination shall include an assessment of the limits, if any, that should be placed on the duration of services to be provided an individual either at the community level or at the departmental facility level. The Department shall also conduct a biennial review of the types of services provided by the Department and shall determine if services of comparable quality can be made available through community providers at a cost that is less than the cost to the Department to provide the services.

(c) The commissioner shall report [~~the results of~~] his findings [~~determination~~] to the legislature, the Legislative Budget Board, and the Governor's budget office in conjunction with the Department's [~~department's~~] biennial appropriations request.

SECTION 2.04. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.12C through 2.12E to read as follows:

Sec. 2.12C. PROPOSALS FOR EXTENDED CARE. (a) In this section, "extended care unit" means a residential unit in a departmental facility that contains chronically mentally ill patients who require 24-hour supervision, long-term care, maintenance, and limited programming.

(b) The Department shall actively solicit proposals from community providers to operate community residential programs that will provide at least the same services that are provided by an extended care unit. A proposal may be designed to serve all or part of the population of an extended care unit.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the services, meet Department standards, and safeguard the safety and well-being of each patient.

(d) The Department may fund a proposal through a contract if:

(1) the provider agrees to provide at least the same services that are provided by an extended care unit for the population the provider proposes to serve;

(2) the provider agrees to provide those services at a cost that is equal to or less than the cost to the Department to provide the services;

(3) the provider agrees to meet the requirements prescribed by Subsection (c) of this section; and

(4) the provider, if it is not the local mental health authority, has signed a memorandum of agreement with the local authority outlining the responsibilities for continuity of care and monitoring.

(e) The appropriate local mental health authority shall monitor the services provided to a patient placed in a program funded under this section. The Department may monitor any service for which it contracts.

(f) The Department retains responsibility for the care of a patient in a program funded under this section. If a program funded under this section ends or does not provide the required services, the Department may terminate the contract. If the Department terminates a contract, the Department shall provide the services or find another program that will provide the services.

Sec. 2.12D. PROPOSALS FOR TRANSITIONAL CARE. (a) In this section, "transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place chronically mentally ill psychiatric patients from acute care units to the community through an array of services appropriate for those patients.

(b) The Department shall actively solicit proposals from community providers to operate transitional living units that will provide at least the same services that the Department traditionally provided in facility-based transitional care units. A proposal may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a departmental facility.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the required services, meet Department standards, and safeguard the safety and well-being of each patient. The Department shall also require each provider, if it is not the local mental health authority, to sign a memorandum of agreement with the local authority outlining the responsibilities of the provider and the local authority for continuity of care and monitoring.

(d) The Department may contract with a community provider if the provider agrees to meet the requirements prescribed by Subsections (b) and (c) of this section and agrees to provide services at a cost that is equal to or less than the cost to the Department to provide the services.

(e) The appropriate local mental health authority shall monitor the services provided to a patient placed in a program funded under this section. The Department may monitor any service for which it contracts.

Sec. 2.12E. PROPOSALS FOR GERIATRIC CARE. (a) In this section, "elderly resident" means an individual residing in a departmental facility who is 65 years of age or older.

(b) At least every two years the Department shall solicit proposals from community providers to operate community residential programs for elderly residents.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the required services, meet Department standards, and safeguard the safety and well-being of each resident. The Department shall also require each provider, if it is not the local mental health or mental retardation authority, to sign a memorandum of agreement with the local authority, outlining the responsibilities for continuity of care and monitoring. The Department may

fund a proposal if the provider agrees to provide services for elderly residents at a cost that is equal to or less than the cost to the Department to provide the services.

(d) The appropriate local mental health or mental retardation authority shall monitor the services provided to a resident placed in a program funded under this section. The Department may monitor any service for which it contracts.

SECTION 2.05. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.13A to read as follows:

Sec. 2.13A. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN COMMUNITY CENTERS. The Department may allocate any funds available and appropriated for the purpose of providing volunteer services to develop or expand volunteer programs in community centers. The Department shall develop formal policies that encourage the growth and development of volunteer services in community centers.

SECTION 2.06. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.17A to read as follows:

Sec. 2.17A. EMPLOYMENT OPPORTUNITIES FOR PATIENTS AND CLIENTS. (a) Each departmental facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for patients and clients in the facility's or center's service area.

(b) In making the assessment, each facility and community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each facility and community center shall annually submit a report to the Department demonstrating that the facility or center has assessed the possibility of converting positions as required by Subsection (a) of this section.

(d) The Department shall compile information from the reports required by Subsection (c) of this section and shall make the information available to each designated provider in a service area.

SECTION 2.07. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.18 to read as follows:

Sec. 2.18. ANNUAL EVALUATION OF ELDERLY RESIDENTS. (a) In this section, "elderly resident" means an individual residing in a departmental facility who is 65 years of age or older.

(b) At least annually, the Department shall evaluate each elderly resident in a departmental facility to determine if the person can be appropriately served in a less restrictive setting. The proximity to the client of family, friends, and advocates concerned with the client's well-being shall be a consideration as to whether the client should be moved from a department facility or to a different department facility.

(c) If the elderly resident is in a departmental mental health facility, the resident's treating physician shall conduct the evaluation. If the elderly resident is in a departmental mental retardation facility, the appropriate interdisciplinary team shall conduct the evaluation.

(d) If the Department determines that an elderly resident can be appropriately served in a less restrictive setting, the Department shall actively attempt to place the resident, in coordination with the local mental health and mental retardation authority, in a less restrictive setting.

(e) In attempting to place an elderly resident in a less restrictive setting, the Department shall recognize that a nursing home may not be able to meet the special needs of an elderly person who has resided in a departmental mental health or

mental retardation facility. To ensure that an appropriate placement is made, the Department shall, as part of the evaluation required by Subsection (b) of this section, identify the special needs of each elderly resident, the type of services that will best meet those needs, and the type of facility that will best provide those services.

(f) Each local mental health or mental retardation authority is responsible for providing continuing care for each elderly resident placed in the authority's service area under this section.

SECTION 2.08. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.29 to read as follows:

Sec. 2.29. MANDATORY REPORTING OF PHYSICIAN MISCONDUCT OR MALPRACTICE. (a) If the Department receives an allegation that a physician employed or under contract with the Department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), the Department shall report the allegation to the Texas State Board of Medical Examiners in the manner provided by Section 4.02 of that Act.

(b) The Department shall provide the Texas State Board of Medical Examiners with a copy of any report or finding relating to an investigation of an allegation reported to the Texas State Board of Medical Examiners.

SECTION 2.09. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.30 to read as follows:

Sec. 2.30. LIEN. (a) The Department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a mentally ill patient or mentally retarded client.

(b) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the mentally ill patient or mentally retarded client or by a person legally responsible for the support of the patient or client;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the patient or client or by a person on the patient's or client's behalf to recover damages arising from an injury for which the patient or client was admitted to a departmental facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient or client arising from an injury for which the patient or client was admitted to a departmental facility or community center.

(c) The lien is for the amount sought as reimbursement for the cost of providing support, maintenance, and treatment to a mentally ill patient or mentally retarded client. However, if the patient or client received the services in a departmental facility, the amount sought may not exceed the amount the Department is authorized to charge under Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), or under Section 61, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes). If the patient or client received the services in a community center, the amount sought may not exceed the amount the community center is authorized to charge under Section 3.14, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).

(d) To secure the lien, the Department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient or client, or the person legally responsible for the support of the patient or client, owns property; or

(2) the patient or client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient or client;

(2) the name and address of the person legally responsible for the support of the patient or client, if applicable;

(3) the period during which the departmental facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the departmental facility or community center.

(f) Thirty days prior to filing the written notice of the lien with the county clerk, the department shall notify by certified mail the mentally ill patient or mentally retarded client and the person legally responsible for the support of the patient or client. Notice shall contain a copy of the charges along with the statutory procedures regarding the filing of liens and procedures developed by the department for contesting the charges. The department shall adopt as rules the procedures to be used to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient or client and the name and address of the departmental facility or community center and, if requested by the person filing the lien, the name of the person legally responsible for the support of the patient or client. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the support of the patient or client.

(h) The notice record must include an attachment that contains a verified account of the charges made by the departmental facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the departmental facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the debt. The county clerk shall record a memorandum of the certificate and the date on which it was filed. The filing of the certificate and recording of the memorandum discharge the lien.

(b) Section 2.30, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section, takes effect September 1, 1988.

SECTION 2.10. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.32 to read as follows:

Sec. 2.32. DETERMINATION OF SAVINGS. (a) The Department shall determine the degree to which the costs of operating departmental facilities for the mentally ill and mentally retarded in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination required by Subsection (a) of this section, the Department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the Department to comply with the requirements of litigation and applicable standards.

(c) If the Department realizes savings in the operation of departmental facilities for the mentally ill, the Department shall allocate those funds to community-based mental health programs.

(d) If the Department realizes savings in the operation of departmental facilities for the mentally retarded, the Department shall allocate those funds to increase funding of community-based mental retardation programs.

SECTION 2.11. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.33 to read as follows:

Sec. 2.33. BUDGET INFORMATION FOR 71ST LEGISLATURE. (a) The Department shall determine the amount of funds per 100,000 persons the Department budgeted to each service area for community mental health and mental retardation services during the 1988-1989 fiscal years.

(b) In the Department's budget request for the 1990-1991 fiscal biennium, the Department shall include information detailing the amount of funds necessary to provide the same amount of funding per 100,000 persons in each local service area as the Department budgeted during the 1988-1989 fiscal biennium in the service area that received the greatest per capita funding.

(c) This section expires September 1, 1991.

SECTION 2.12. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.34 to read as follows:

Sec. 2.34. COMPETITIVE REVIEW REQUIREMENT. (a) It is the policy of the state that the Department establish procedures to:

(1) promote more efficient use of public funds;

(2) ensure periodic review of agency management and support activities in order to improve agency operations, better determine costs, increase agency productivity, and remain competitive with the private sector; and

(3) ensure that activities that are available through the private sector are provided by state government only if the state can provide the service at a lower cost.

(b) In the development of such procedures, the Department shall comply with any competitive review purchasing program provisions contained in **S.B. 298** or **H.B. 584** as enacted by the 70th Legislature in its regular session in 1987.

(b) This section applies only if **S.B. 298** or **H.B. 584** is enacted by the 70th Legislature in its regular session in 1987 and contains a provision related to the competitive review purchasing program.

SECTION 2.13 Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.35 to read as follows:

Sec. 2.35. COORDINATION OF SERVICES FOR CHILDREN AND YOUTH. The Department shall designate an employee authorized in the exempt salary schedule for the Department to be responsible for planning and coordinating services and programs for children and youth. The employee shall also be responsible for budget and policy review, as well as interagency coordination of services to children and youth.

SECTION 2.14. (a) Subchapter L, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Section 59A to read as follows:

Sec. 59A. DEVELOPMENT OF JOINT LONG-RANGE PLAN. (a) The department and the Texas Department of Human Services shall develop a joint long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint necessary staff to develop the joint plan through research of appropriate topics and through the use of public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the joint plan, the departments shall consider existing plans or studies made by the departments.

(d) The joint plan developed by the departments must address at least the following topics:

(1) the needs of persons with developmental disabilities, including mental retardation, in the state;

(2) how state services should be structured to meet those needs;

(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;

(4) the statutory limits and rule or policy changes that are necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-MR program to "persons with related conditions" as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the joint plan.

(e) If necessary, the departments shall modify their respective long-range plans and any other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and update the joint plan biennially. Each department shall consider the updated joint plan in any future modifications of that department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(b) The Texas Board of Mental Health and Mental Retardation and the Texas Board of Human Services shall jointly review and approve the plan required by Section 59A, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), as added by this section, not later than June 1, 1988. The board of each department shall present the plan to the 71st Legislature not later than February 1, 1989. The Texas Department of Mental Health and Mental Retardation and the Texas Department of Human Services shall consider the results of the plan in the development of their respective budget requests for the 1990-1991 fiscal year.

SECTION 2.15. Section 61, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 61. SUPPORT, [~~AND~~] MAINTENANCE, AND TREATMENT OF RESIDENTS. (a) The department shall establish by rule a sliding fee schedule for the payment of the cost of support, maintenance, and treatment by the parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department. The fee must be based on the parents' net taxable income and ability to pay. At the election of the parents, the parents' net taxable income is determined by the parents' most recent current financial statements or federal income tax returns. The sliding fee schedule must be designed to recover, from a mentally retarded person's parents who have sufficient income and ability to pay, the cost to the state of providing support, maintenance, and treatment to the mentally retarded person. In determining the portion of the cost of support, maintenance, and treatment that the parents of a minor are required to pay under this subsection, the department shall adjust, when appropriate, the payment required under the department's fee schedule to allow for consideration

of other factors affecting the parents' ability to pay. No person shall be denied services because of inability to pay. [The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:

[If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:	The Monthly payment per child shall not exceed:
[Less than $4,000	$ 5
[4,000—4,999	10
[5,000—5,999	20
[6,000—6,999	30
[7,000—7,999	40
[8,000—8,999	50
[9,000—9,999	60
[10,000—10,999	70
[11,000—11,999	80
[12,000—12,999	90
[13,000—13,999	100
[14,000—14,999	110
[15,000—15,999	120
[16,000—16,999	130
[17,000—17,999	140
[18,000—18,999	150
[19,000—19,999	160
[20,000—up	170]

No payment under the fee schedule [above formula] shall exceed [actual] cost to the state per resident[, and if the payment required under the formula is more than actual cost, then the amount paid shall be the actual cost]. If the parents are divorced, each parent's rate shall be based on his or her own [net taxable] income. If the divorced parents' combined fees are [net taxable income is] such that the maximum authorized fee [rate] is exceeded [called for] under the fee schedule [above formula], the maximum authorized fee [rate] shall be equitably allocated between the parents in accordance with rules established by the department; provided, however, that neither parent's allocated fee shall exceed the fee called for under the fee schedule for that parent [the ratio of each parent's net taxable income to the parents' combined net taxable income]. A fee [rate] shall not be established against a parent based on the fee schedule [above formula] to the extent that the parent actually pays court-ordered child support on behalf of the resident; however, the department shall consider such court-ordered child support to be the property and estate of the resident and may establish a fee [rate] based on the child support obligation in addition to any other fees [rates] authorized by this subsection.

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support, [and] maintenance, and treatment as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support, [and] maintenance, and treatment regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support, [~~and~~] maintenance, and treatment due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support, [~~and~~] maintenance, and treatment shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the department fee schedule [~~foregoing formula~~].

(d) Unpaid charges for support, [~~and~~] maintenance, and treatment accruing after the effective date of this Act due by parents for the support, [~~and~~] maintenance, and treatment of mentally retarded persons who are [~~minors and~~] residents in residential care facilities operated by the department shall be a claim in favor of the state for such support, [~~and~~] maintenance, and treatment, and shall constitute a lien against the parents' property and estate as provided by Section 2.30, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support, [~~and~~] maintenance, and treatment may be determined under rules and regulations adopted by the department provided that total charges from all sources for support, [~~and~~] maintenance, and treatment shall not exceed the [~~actual~~] cost of such support, [~~and~~] maintenance, and treatment, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Child support payments for the benefit of a mentally retarded resident paid or owing by a parent pursuant to a divorce decree or other court order shall be considered by the department to be the property of the mentally retarded resident and his estate, and charges may be made against such child support obligations. [~~Charges made against such child support obligations shall not be limited to the maximum charge authorized by Subsection (a) of this section.~~] In determining the liability under the department fee schedule [~~Subsection (a) of this section~~] for a parent who is obligated to pay child support for the benefit of the resident, the department shall give the parent a credit against the monthly charge authorized for the parent by the department fee schedule [~~Subsection (a) of this section~~] for the amount of child support the parent actually pays for the benefit of the resident. The parent who receives the child support payments is liable for the monthly charges based on the child support obligation to the extent such payments are actually received in addition to the liability imposed by the department fee schedule [~~Subsection (a) of this section~~]. The department may, upon the failure of a parent to pay child support payments or upon the failure of a parent to pay charges based on the child support obligation, file a motion to modify the court order to require the support to be paid directly to the residential care facility in which the mentally retarded person resides for the resident's support, [~~and~~] maintenance, and treatment. The court may, in addition, order all past due child support to be paid to the residential care facility to the extent that charges have been made against the child support obligation.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed $50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support, [~~and~~] maintenance, and treatment of such mentally retarded person regardless of his age. In order to qualify

for the exemption granted by this subsection, a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of such a trust shall, upon request, provide the department with a current financial statement which reflects the value of the trust estate. If a current financial statement is not provided within 30 days of the department's request, the department may petition a district court to order the trustee to provide it with a current financial statement. The court shall hold a hearing on the department's petition within 45 days of the date it is filed and shall order the trustee to provide the department with a current financial statement if the court finds that the trustee has failed to provide the statement. Failure of the trustee to comply with the court's order may be punishable by contempt. For the purposes of this subsection, a guardianship established pursuant to the Texas Probate Code; a trust established pursuant to Chapter 142, Property Code [~~Article 1994, Revised Statutes, as amended~~]; the facility custodial account established pursuant to Chapter 251, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3183c, Vernon's Texas Civil Statutes); the provisions of a divorce decree or other court order relating to child support obligations; an administration of a decedent's estate; or an arrangement whereby funds are held in the registry or by the clerk of a court is not a "trust" and is not entitled to the exemption contained in this subsection.

(h) The department may use the projected cost of providing residential services to establish the maximum charge that may be made to a payer [~~whose maximum payment is not prescribed by Subsection (a) of this section~~]. The department may establish maximum charges on a statewide per capita basis, on an individual facility per capita basis, on the basis of the type of service provided, or on any combination of these bases. The department may establish charges and accept payments that are in excess of the department's projected cost from a payer who is not an individual and whose method of determining the rate of reimbursement to a provider results in the excess.

SECTION 2.16. Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. The Texas Department of Mental Health and Mental Retardation shall establish by rule a sliding fee schedule for the payment of the cost of support, maintenance, and treatment by the parents of a patient under 18 years of age who is in a state mental health facility. The fee must be based on the parents' net taxable income and ability to pay. At the election of the parents, the parents' net taxable income is determined by the parents' most recent current financial statements or federal income tax returns. The sliding fee schedule must be designed to recover from a patient's parents who have sufficient income and ability to pay, the cost to the state of providing support, maintenance, and treatment to the patient. In determining the portion of the cost of support, maintenance, and treatment that the parents of a minor are required to pay under this subsection, the department shall adjust, when appropriate, the payment required under the department's fee schedule to allow for consideration of other factors affecting the parents' ability to pay. No person shall be denied services because of an inability to pay. Except as provided by Section 5A of this Act, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient. [~~The Texas Department of Mental Health and Mental Retardation, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of patients in any State hospital under its management and control at a sum not to exceed the cost of same or for such part thereof as such respective patient, his relatives or guardian of his estate may be able to and agree to pay, and binding the persons making such contracts to payment thereunder.~~]

SECTION 2.17. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.35 to read as follows:

Sec. 2.35. FEE ADVISORY COMMITTEE. (a) Not later than September 1, 1987, the Department shall appoint a seven-member fee advisory committee. At least four of the members must be parents of residents of a departmental facility. In making the appointments, the Department shall provide for a balance between parents of minors and adults in state hospitals and parents of minors and adults in state schools.

(b) The committee shall assist the Department in developing an equitable fee schedule as prescribed by Section 61, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), and by Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes). The committee shall also advise the Board before adoption of the fee schedule and conduct a study of the impact of the fee schedule.

(c) The Department shall provide the committee with necessary support and technical assistance.

(d) In developing the fee schedule, the Department and committee shall consider the impact the fees would have on state general revenue and the state's ability to obtain reimbursement for services under Title XIX, federal Social Security Act.

(e) The committee shall submit a report to the 71st Legislature on the study prescribed by Subsection (b) of this section that includes any necessary statutory change or additional riders to the General Appropriations Act.

(f) This section expires on the date the committee submits to the 71st Legislature the report prescribed by Subsection (e) of this section.

SECTION 2.18. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding a new Section 2.36 to read as follows:

Sec. 2.36. JOINT STUDY OF TREATMENT FOR ABUSED CHILDREN. The Department and the Texas Department of Human Services shall conduct a joint study of current methods for treating abused children, the effectiveness of each method, and the feasibility of utilizing the methods in this state. The study shall consider fiscal impact and any necessary statutory changes. The findings from the study shall be submitted to the appropriate committees of the house and senate by January 1, 1989.

(b) This section expires on January 1, 1989.

SECTION 2.19. Section 2a, Interstate Compact on Mental Health (Article 5561f, Vernon's Texas Civil Statutes), as amended by Chapter 479, Acts of the 69th Legislature, Regular Session, 1985, and by Chapter 729, Acts of the 69th Legislature, Regular Session, 1985, is repealed.

ARTICLE 3

SECTION 3.01.

Section 3.01, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) and by adding Subsection (d) to read as follows:

(a) Local agencies which may establish and operate community centers are a county, a city, a hospital district, a school district, or any organizational combination of two (2) or more of these. When community centers are established by an organizational combination, the governing bodies of such organizational combination shall enter into a contract between or among them which shall stipulate[:

~~[(1) the kinds and number of community centers, as that term is defined in subsection (b) below, which are to be established, and~~

[~~(2)~~] whether the board of trustees shall consist of not less than five (5) nor more than nine (9) members selected from the governing bodies of the organizational combination, or of not less than five (5) nor more than nine (9) members to be appointed from the qualified voters of the region to be served. This contract may be renegotiated or amended from time to time as necessary to [~~provide for the establishment of additional community centers or to~~] change the method of establishing a board of trustees.

(c) A community center is an agency of the state, a governmental unit, and a unit of local government as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code, and a local government as defined by Section 3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) [~~Section 2, Texas Tort Claims Act (Article 6252-19, Vernon's Texas Civil Statutes)~~].

(d) A community center may not be established unless the region to be served by the center contains a population of at least two hundred thousand (200,000), according to the most recent federal census.

SECTION 3.02. Sections 3.11(c), (e), and (f), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) A special fund to be known as the special community centers facilities construction and renovation fund is established in the state treasury. The fund may be used only to finance the construction of facilities by the Department or the renovation of buildings and facilities by community centers under this section. The Texas Board of Mental Health and Mental Retardation shall establish priorities for the use of facilities constructed or renovated under this section in terms of appropriate types of community-based services and alternative living arrangements for the mentally disabled. These priorities shall serve as a basis for criteria to be used by the Department in determining the eligibility of a proposal for facility construction or renovation. If the Department agrees to construct a facility for a community center, the agreement must include provision for a lease-purchase arrangement between the community center, the governing body of each local agency establishing the community center, and the Department. If the Department agrees to provide funding to renovate a building or facility owned or leased by a community center, the renovation funding agreement must include provision for obtaining a lien against the community center's buildings or facilities in an amount equal to the funding provided. The renovation funding agreement must also include a provision authorizing the Department to withhold state contract funds [~~grant-in-aid~~] if the community center fails to make repayments on time. The Department shall specify a leasing or repayment arrangement which includes an amortization of the cost of the facility or renovation over a period not to exceed forty (40) years. The agreement may provide for reasonable interest to be paid by the center on the total cost of the facility or renovation. The rate of interest may not exceed fifty (50) percent of the market interest rate, as determined by the Department, applicable at the time of the signing of the lease-purchase or renovation funding agreement to any establishing agency's revenue bonds if the agency were to issue bonds for the construction of the community center or for the renovation of the building or facility for the same term as the term covered by the lease-purchase or renovation funding agreement. The leasing payments shall be credited to the special community centers facilities construction and renovation fund toward the purchase of the facility by the community center. The repayments by a community center of funding provided to renovate a building or facility shall be credited to the special community centers facilities construction and renovation fund toward repayment of the funding and release of the lien.

(e) At such time as the community center has paid to the Department the amount specified under the terms of the renovation funding agreement, the

Department is authorized to and shall release the lien against the community center's buildings or facilities. If a payment is not made to the Department by the due date established in the renovation funding agreement, the community center is considered in default. On default by the community center, the Department shall send to the community center a written notice of default and a statement that the center must make the overdue payments before the expiration of sixty (60) days after the day on which the center receives the notice. If the community center does not make the overdue payments within the allotted time, the Department may withhold state contract funds [~~grant-in-aid~~] in the amount of the overdue payments or may terminate the renovation funding agreement and sue to foreclose on the lien.

(f) The community center may utilize state funds, including but not limited to state contract funds [~~grant-in-aid~~], for the operation of the facility, provided that the total amount of all state funds used in the actual operation of the facility may not exceed sixty (60) percent of the total operating budget of that facility. State funds received by the community center may not be used to pay leasing payment obligations or repayments of renovation funding under this section. Leasing payments and repayments of renovation funding do not qualify as operating expenses for determining the total operating budget of the facility. Construction, renovation, and operation of a facility under the provisions of this section are not grounds for receipt by a community center of additional contract funds [~~grant-in-aid~~] in excess of the amount of contract funds [~~grant-in-aid~~] the center would otherwise receive pursuant to the rules and regulations of the Department governing the distribution of such funds.

SECTION 3.03. (a) Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended by adding Sections 3.12A and 3.12B to read as follows:

Sec. 3.12A. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) Except as provided by Subsection (b) of this section, it is the intent of the legislature that the Department limit its control over and routine reviews of community center programs to those programs that:

(1) use state funds or use required local funds that are matched with state funds;

(2) provide core or required services;

(3) provide services to former clients or patients of a departmental facility; or

(4) are affected by litigation in which the Department is a defendant.

(b) The Department may review any community center program if the Department has reason to suspect that a violation of a departmental rule has occurred or if the Department receives an allegation of patient or client abuse.

(c) The Department may determine if a program is subject to the Department's review if there is a question as to whether a particular program uses state funds or uses required local matching funds.

Sec. 3.12B. MEMORANDUM OF UNDERSTANDING ON PROGRAM REVIEWS. (a) The Department shall identify each state agency that reviews the services or programs of a community center.

(b) The Department, the Texas Department of Human Services, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, the Central Education Agency, the Texas State Board of Pharmacy, and any other agency identified by the Department under Subsection (a) of this section shall adopt a joint memorandum of understanding to maximize the use of each agency's reviews by eliminating duplication of program reviews unless duplicative reviews are necessary to comply with federal funding requirements.

(c) The joint memorandum may not reduce the degree of a community center's accountability to a state agency for the expenditure of funds that the community center received from that agency.

(d) Not later than the last month of each fiscal year, the Department and the other agencies shall review and update the joint memorandum.

(c) Each agency shall adopt the joint memorandum by rule. All revisions to the memorandum must be adopted by rule.

(b) Not later than December 31, 1987, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, the Central Education Agency, the Texas State Board of Pharmacy, and each agency identified under Subsection (a), Section 3.12B, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as added by this section, shall adopt a joint memorandum of understanding as prescribed by Section 3.12B.

ARTICLE 4

SECTION 4.01. Article 4, Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. [~~CONTRACTS FOR~~] COMMUNITY-BASED SERVICES

Sec. 4.01. RULES AND REGULATIONS OF THE DEPARTMENT. (a) The Department shall prescribe such rules, regulations and standards, not inconsistent with the Constitution and laws of this State, as it considers necessary and appropriate to insure adequate provision of community-based mental health and mental retardation services by departmental facility outreach programs or by community centers and other providers receiving contract funds as designated providers pursuant to Section 4.03 of this Act. Each designated provider [~~such~~] contract shall contain a provision authorizing the Department to have unrestricted access to all facilities, records, data, and other information under the control of the designated provider or subcontractor of the designated provider as necessary to enable the Department to audit, monitor, and review all financial and programmatic activities and services associated with the contract.

(b) Before any rule, regulation or standard is adopted the Department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations and standards adopted by the Department under this Section shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(d) A copy of these rules shall be sent to each departmental facility outreach program and each community center or other provider receiving contract funds as a designated provider pursuant to Section 4.03 of this Act.

Sec. 4.02. PLAN. As soon as possible after its establishment the board of trustees of a community center shall submit to the Department:

(1) a copy of the contract between the participating local agencies, if applicable;

(2) a plan within the projected financial, physical and personnel resources of the region to be served to develop and make available to the residents of the region an effective mental health or mental retardation services program, or both, through a community center or centers.

Sec. 4.03. PROVISION OF [~~ELIGIBILITY FOR~~] COMMUNITY-BASED SERVICES [~~CONTRACTS~~]. (a) The Department shall insure that at a minimum the following services are available in each service area:

(1) 24-hour emergency screening and rapid crisis stabilization services;

(2) community-based crisis residential service or hospitalization;

(3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4) family support services, including respite care, as provided by Section 4.03A of this Act; [~~and~~]

(5) case management services;

(6) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(7) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

In addition, the Department shall arrange for appropriate community-based services to be available in each service area, including the assignment of a case manager, for all persons discharged from departmental facilities or institutions in need of aftercare services or continuum of care.

(b) The Department shall identify and contract with one or more designated providers for each service area. Each designated provider shall provide, either directly or by subcontract, specific performance outcomes or services to address the needs of priority client populations as required by the Department and shall comply with the rules, regulations and standards established by the Department pursuant to Section 4.01 of this Act. Each designated provider shall coordinate its activities with those of other appropriate agencies providing care and treatment for individuals with drug or alcohol problems. In identifying a designated provider, the Department shall give preference to a community center located in a given service area established pursuant to Section 3.01 of this Act. If the Department is unable to negotiate a contract with a center to insure that specific required services for priority client populations are available in that service area, or if the Department determines that a center does not have the capacity to insure the availability of such services, the Department may contract with other local agencies or private providers or organizations to act as a designated provider for that service area. If the Department is unable to identify and contract with a designated provider in a service area, the Department shall provide the services required under this article directly through a departmental facility outreach program.

(c) The Department shall develop standards of care and mechanisms for monitoring the services provided by departmental facility outreach programs or by designated providers and their subcontractors. These standards shall be designated to insure that the quality of community-based services be consistent with the quality of care available in other departmental facilities and institutions. The Department shall biennially review these standards in conjunction with designated providers to determine if each standard is necessary to ensure the quality of care. The Department shall specify performance standards including outcome measures for evaluating the compliance of a departmental facility outreach program or designated provider with the provisions of its obligation or contract to provide specific services to priority client populations. The Department shall review the program quality and program performance results of each departmental facility outreach program and each designated provider at least once each fiscal year. The Department may determine the scope of each review on a case-by-case basis. In addition, to supplement departmental reviews, the Department shall assist designated providers in developing a peer review organization to provide self-assessments of programs [~~evaluate the performance of each designated provider prior to any contract renewal~~]. The Commissioner shall refuse to renew a contract with a designated provider and select other agencies, providers, or organizations to be the designated provider if an evaluation of the original provider's performance by the Department indicates an inability to insure the availability of the specific services to priority client populations required by the Department and the provisions of this Act.

(d) The Department may include in the terms of its contract with a designated provider a requirement that some or all of the state funds be matched by local support. [~~If such match is specified, it shall be uniformly required of all providers or contractors in the service area.~~] Local support shall be in such proportions and

amounts as may be determined by the Department. If such match is specified, it shall be uniformly required of all providers or contractors in the service area. The Department shall also establish a local match requirement for departmental facility outreach programs that provide community-based services required under this article. The requirement must be consistent with the requirements applied to designated providers. For the purpose of calculating the local share of the operating costs of a community center, departmental facility outreach program, or other designated provider, patient fee income, services, and facilities contributed by the designated provider and contributions by a county or city or other locally generated contributions may be counted as local support.

(e) The Department shall establish a uniform fee collection policy which is the same for community centers and other designated providers which is equitable, provides for collections, and maximizes contributions to local revenue.

Sec. 4.03A. RESPITE CARE. (a) The Department shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers;

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled; and

(5) regulate or prescribe any other procedure necessary to administer this section.

(c) The Department shall establish service and performance standards for departmental facilities and designated providers to use in operating the in-home respite care program. The Department shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The Department may obtain the information through the use of public hearings or from an advisory group.

(d) The service and performance standards established by the Department under Subsection (c) of this section must:

(1) prescribe minimum personnel qualifications the Department determines are necessary to protect health and safety;

(2) establish various levels of personnel qualifications that are dependent on the needs of the patient or client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the Department determines that additional training is necessary.

Sec. 4.04. AUDITING PROCEDURES. The board of trustees of a community center or the administrative authority of a designated provider other than a community center, as a condition precedent to its receiving contract funds under this Act, shall annually have its accounts audited by a Texas certified or public accountant licensed by the Texas State Board of Public Accountancy. Such audit shall meet at least the minimum requirements as shall be, and in such form as may

be, prescribed by the Department and approved by the State Auditor. A copy of each such annual audit, approved by the board of trustees of the community center or the administrative authority of the designated provider, shall be filed by the community center or designated provider with the Department on such date as the Department may specify. Where the board of trustees or administrative authority declines or refuses to approve the audit report, it shall nevertheless file with the said Department a copy of the audit report with its statement detailing its reasons for failure to approve the report. In addition to the copy furnished the Department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee. The Commissioner and the State Auditor, on behalf of the Department and the Legislative Audit Committee, respectively, shall have access to all vouchers, receipts, journals and other records as either may deem needed and appropriate for the review and analysis of audit reports.

Sec. 4.05. WITHHOLDING CONTRACT FUNDS [~~GRANT-IN-AID~~]. In accordance with a renovation funding agreement between the Department and a community center executed as prescribed by Section 3.11 of this Act, the Department may withhold contract funds [~~grant-in-aid~~] in the amount of the overdue payments from any center that fails to make timely repayments of funding provided to renovate a community center building or facility.

Sec. 4.06. REVIEW OF CRISIS RESIDENTIAL AND HOSPITALIZATION SERVICES. (a) As a condition precedent to receiving contract funds under this Act, the board of trustees of a community center shall review the method by which the center provides the crisis residential or hospitalization services, or both, required under Section 4.03(a)(2) of this Act.

(b) The board of trustees shall conduct the review every two years before a contract is due for renewal. The community center shall submit information to the Department describing the review process and the results of the review before a contract is due for renewal.

(c) The board of trustees shall conduct the review in accordance with Department rules. The review must include at least the following:

(1) an efficiency and performance review to identify the quantity and quality of services that are necessary in the next contract period;

(2) bid specifications for the quantity and quality of services identified under Subdivision (1) of this subsection;

(3) an estimate of the total cost to the community center to provide or to contract for the identified services in accordance with the bid specifications and using the most efficient means identified;

(4) a solicitation of bids from qualified providers based on the developed bid specifications; and

(5) an analysis of the submitted bids and a comparison of those bids with the center's estimate of the total cost for providing or contracting for the service required by Subdivision (3) of this subsection.

(d) In determining the estimate of the total cost to the community center required by Subsection (c)(3) of this section and the analysis of submitted bids required by Subsection (c)(5) of this section, the community center shall base the estimate and analysis on the method of service delivery that the community center is using in the current contract period. However, in determining the estimate of the total cost as required by Subsection (c)(3) of this section, the center may include modifications to the existing operations.

(e) The Department shall adopt rules establishing procedures and standards for the community centers to use in conducting the review required by this section. The rules must establish consistent standards for:

(1) the development of bid specifications;

(2) the center's estimate of the total cost to continue the existing method of service delivery; and

(3) the analysis of the bids submitted and the comparison of those bids with the center's estimate.

(f) Before the Department may renew a contract with a community center, the Department shall require the center to demonstrate that the center is providing crisis residential or hospitalization services, or both, using the method or provider that provides the services in compliance with departmental contracts and standards and at the lowest cost. The demonstration must be based on the review required by this section.

ARTICLE 5

SECTION 5.01. (a) The Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 5 to read as follows:

Art. 5. DEPARTMENTAL FACILITIES

Sec. 5.01. BUDGETS. (a) The Department shall develop budgets for its facilities that are based on uniform costs for specific types of services provided by a facility.

(b) The Department may deviate from the requirement of Subsection (a) of this section only if the Department documents that a legitimate reason exists for the deviation.

Sec. 5.02. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION. The Department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Sec. 5.03. MANAGEMENT OF SURPLUS PROPERTY. (a) To the extent provided by this Act, the Department may lease, transfer, or otherwise dispose of any surplus real property including any improvements under its control and management or authorize the lease, transfer, or disposal of the property. Surplus property shall be defined as property designated by the Board to have minimal value to the present service delivery system and projected to have minimal value to the service delivery system as described in the Department's long-range plan required by Section 2.12B of this Act.

(b) The proceeds resulting from the lease, transfer, or disposal of real property including any improvements under this section shall be deposited to the credit of the Department in the Texas capital trust fund established under Article 601e, Revised Statutes. The proceeds and any interest from the proceeds may be appropriated only to fund improvements to the departmental system of facilities and to fund the special community centers facilities construction and renovation fund for improvements and renovations authorized under Subsection (c), Section 3.11, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).

(c) All lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with state-wide circulation. Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The board shall adopt proper forms and regulations, rules, and contracts, as will, in the best judgment, protect the interest of the state. The department may reject any and all bids.

(d) This section does not authorize the Department to close or consolidate a facility used to provide mental health or mental retardation services without first obtaining legislative approval.

Sec. 5.04. USE OF DEPARTMENTAL FACILITIES BY SUBSTANCE ABUSERS. (a) The Department shall annually provide the Texas Commission on

Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons who had only substance abuse problems and which admissions were for persons who had substance abuse problems but whose primary diagnoses were other types of mental health problems.

(b) Not later than September 1 of each even-numbered year, the Department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons who have substance abuse problems and who cannot be treated in the community.

Sec. 5.05. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) When evaluation and diagnostic services for emotionally disturbed children and youth are not immediately available through a local mental health authority, the department shall, at each state mental health facility, make short term evaluation and diagnostic services available for the emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services.

(b) The Texas Department of Human Services is authorized to make payments for such services. Payments shall be based on fees jointly agreed to by both agencies. Any payments received per this agreement may be used by the department to contract for community-based residential placements for emotionally disturbed children and youth.

(c) The department shall maintain computerized data on emotionally disturbed children and youth. The data to be maintained shall contain individual and aggregate information on emotionally disturbed children and youth. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of emotionally disturbed children and youth. The department is authorized to coordinate with the Texas Department of Human Services in developing the information. The department shall make the information available to the state mental health facilities and the community mental health and mental retardation centers.

Sec. 5.06. REPORT ON APPLICATION FOR SERVICES. (a) The department shall collect information on applications for residential and nonresidential services provided by the department and a mental retardation authority and the actions of the department and the mental retardation authority in response to each application. The information shall include the age, diagnosis, and legal status of the applicant; the date the application was received; and the date on which the department or the mental retardation authority acted on the application.

(b) The department shall use the information to prepare an annual report to the board on applications received and the disposition of the applications. The report shall not contain any information that would disclose the identity of any applicant for services.

(c) The board shall submit copies of the report to the legislature by October 1 of each year. The report shall be subject to the provisions of Article 6252-17a, Vernon's Texas Civil Statutes.

Sec. 5.07. STUDY ON FEASIBILITY OF CONSOLIDATING ADMINISTRATION OR OPERATION OF STATE CENTERS. (a) The Department shall conduct a study to determine the feasibility of consolidating by contract or management agreement the administration or operation of the El Paso, Rio Grande, Laredo, Beaumont, and Amarillo state centers and the community centers located in the respective state center's service area.

(b) The Department shall determine if consolidation would result in the patients and clients receiving the same quality and quantity of services and would be more cost-effective than the current system of administration or operation.

(c) Not later than August 1, 1988, the Department shall prepare and submit to the Texas Sunset Commission, Legislative Budget Board, and the Governor's budget office a report that contains the results of the Department's efforts.

(d) The report required by Subsection (c) of this section must contain a specific plan to implement the consolidation of each state center and community center located in the same service area. The plan may provide that a state center shall contract to administer or operate the community center or that a community center shall contract to administer or operate the state center. The report must also contain an analysis of the positive and negative aspects of consolidating all or part of the administration or operation of the state centers and the appropriate community centers.

(e) In conducting the study and preparing the plan and report prescribed by this section, the Department shall include as a participant from each state center's service area:

(1) at least one parent who has a child with a mental handicap and who is currently using affected services in the area; and

(2) the state senators and representatives who represent the areas served by the state centers and community centers in that service area.

(f) This section expires September 1, 1988.

(b) Beginning with the 1990-1991 fiscal biennium, the Texas Department of Mental Health and Mental Retardation shall develop the budgets for departmental facilities in accordance with Section 5.01, Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes), as added by this section.

(c) Not later than October 1, 1988, the Texas Board of Mental Health and Mental Retardation shall submit to the legislature the first report required by Section 5.06, Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes), as added by this section.

SECTION 5.02. Section 1.11, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g) In allocating grant funds, the commission shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. In addition to the requirements of Subsection (f) of this section, an organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program for which the funds are requested will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the commission.

ARTICLE 6

SECTION 6.01. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.31 and 2.31A to read as follows:

Sec. 2.31. DESIGNATION OF SINGLE PORTAL AUTHORITIES. (a) The Board shall adopt rules relating to the designation of local mental health authorities as single portal authorities. The Board shall also adopt rules governing commitments to a single portal authority and transfers of patients that involve a single portal authority. The rules must be based on the advice and recommendations of the single portal review committee established under Section 2.31A of this article.

(b) The Board shall also adopt rules that provide for emergency admission to a departmental mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(c) In developing rules under this section, the Board's first consideration must be satisfying individual patient treatment needs in the most appropriate setting. The

Board shall also give consideration to reducing patient inconvenience resulting from admissions and transfers between providers.

(d) The Board may designate a local mental health authority as a single portal authority for a service area if:

(1) the Board determines that the authority operates or contracts for the licensed in-patient mental health facilities determined necessary by the Board;

(2) the Board determines that all core services required by Section 4.03 of this Act are available in the service area; and

(3) the single portal review committee:

(A) determined that the core services in the service area are of sufficient quality and quantity as measured by criteria established by the single portal review committee;

(B) determined that the local mental health authority meets the criteria set by the single portal review committee;

(C) received endorsement of the application from the county judges and police chiefs who have jurisdiction in the applicant's service area and from the superintendent of the departmental mental health facility serving the area; and

(D) approved the authority's application.

(e) If the Board designates a local mental health authority as a single portal authority, the Department shall notify each judge who has probate jurisdiction in the service area and any other person the single portal authority considers necessary of the designation and the new procedures required in the area.

Sec. 2.31A. SINGLE PORTAL REVIEW COMMITTEE. (a) The Board shall appoint a nine-member single portal review committee. The Board shall appoint:

(1) two persons who are representatives of consumers of mental health services;

(2) one person who is a representative of superintendents of departmental mental health facilities;

(3) one person who is a representative of directors of community centers;

(4) one person who is a representative of county judges;

(5) one person who is a representative of police chiefs;

(6) one person who is a representative of private psychiatric hospitals;

(7) one person who is a representative of licensed substance abuse facilities; and

(8) one person who is a representative of practicing private psychiatrists.

(b) Members serve staggered two-year terms with the terms of four members expiring every even-numbered year and the terms of five members expiring every odd-numbered year.

(c) The members receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

(d) The committee shall:

(1) develop criteria for the types, quantity, and quality of services that must be provided in an area for a local mental health authority to be designated as a single portal authority; and

(2) develop criteria for evaluating applications for designation as a single portal authority.

(e) The criteria shall include a requirement that the applicant obtain endorsements from the county judges, police chiefs, and superintendent of the departmental mental health facility in the applicant's service area.

(f) In developing all criteria, the committee shall attempt to reduce duplication by using existing departmental standards for quality of services, to the extent possible, and permitting the use of existing inspection reports as evidence of performance. The committee may establish additional criteria or require additional inspections or reports as needed.

(g) The Board shall adopt by rule the criteria developed by the committee.

(h) The Department shall provide the committee with necessary staff support and shall provide the committee with funds to hire any necessary additional staff. The committee may either contract with consultants to conduct site visits or use Department staff.

(i) The committee shall evaluate applications for designation as a single portal authority. The committee shall determine if:

(1) the applicant meets the criteria for designation; and

(2) the necessary core services are available in sufficient quality and quantity in the service area, as measured by criteria established by the single portal review committee.

(j) The committee shall make a recommendation to the Board on each application the committee reviews.

(b) On the effective date of this Act, the Texas Department of Mental Health and Mental Retardation shall appoint the members of the single portal review committee required by Section 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The department shall designate four members to serve terms ending in 1988 and five members to serve terms ending in 1989. The single portal review committee shall recommend criteria and procedures for reviewing applications for designation as a single portal authority to the Texas Board of Mental Health and Mental Retardation not later than May 1, 1988.

(c) The Texas Board of Mental Health and Mental Retardation must adopt the rules required by Sections 2.31 and 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section, not later than September 1, 1988. Beginning September 1, 1988, the board may designate local mental health authorities as single portal authorities. During the period from September 1, 1988, through August 31, 1989, the board may not designate more than six local mental health authorities as single portal authorities.

(d) By January 1, 1989, the single portal review committee shall prepare and submit a report to the Texas Board of Mental Health and Mental Retardation that describes any problems the committee encountered in carrying out its responsibilities under Sections 2.31 and 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The report shall also include recommendations to the board and the 71st Legislature on how to improve the single portal review process. The board shall submit the committee's report to the appropriate committees of the house and senate by February 1, 1989.

SECTION 6.02. Section 4, Texas Mental Health Code (Article 5547-4, Vernon's Texas Civil Statutes), is amended by amending Subdivision (18) and by adding Subdivisions (23) and (24) to read as follows:

(18) "In-patient mental health facility" means a mental health facility which can provide 24-hour residential and psychiatric services that is operated by the department, is a private mental hospital licensed by the department, is a community center as defined in Subdivision (22) of this section or a facility operated by a community center or other entity designated by the department to provide mental health services, is that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons and which is licensed either by the department or the Texas Department of Health, or is a hospital operated by an agency of the United States.

(23) "Board" means the Texas Board of Mental Health and Mental Retardation.

(24) "Single portal authority" means a mental health authority designated as a single portal authority by the department.

SECTION 6.03. Section 25, Texas Mental Health Code (Article 5547-25, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. RIGHTS OF VOLUNTARY PATIENTS ADMITTED FOR IN-PATIENT CARE. (a) Every voluntary patient in an in-patient mental health facility has the following rights:

(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed orally in simple, nontechnical terms of these above-listed rights. In addition, the person shall be informed in writing of these same above-listed rights, in his primary language if possible. The above-listed rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

(b) In addition to the rights provided by Subsection (a) of this section, the department shall notify each adult patient of the patient's right to have the department notify his family prior to discharge or release if the patient grants permission. If the patient grants permission for notification, the department or facility shall make a reasonable attempt to give the patient's family prior notice of the patient's release or discharge.

SECTION 6.04. Section 26, Texas Mental Health Code (Article 5547-26, Vernon's Texas Civil Statutes is amended by amending subsection (f), as follows:

(f) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that if the 24-hour period ends on a Saturday or Sunday or a legal holiday or before 4 p.m. on the first succeeding business day, then the period of detention shall end at 4 p.m. on the first succeeding business day [~~should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday then the 24-hour period allowed for obtaining the order permitting further detention shall begin at 9 a.m. on the first succeeding business day~~].

SECTION 6.05. Section 28, Texas Mental Health Code (Article 5547-28, Vernon's Texas Civil Statutes) is amended by amending subdivision (5) of subsection (a), as follows:

(5) the relationship, set forth in detail [~~if any~~], of the applicant to the person sought to be detained.

SECTION 6.06. Section 34, Texas Mental Health Code (Article 5547-34, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 34. RECOMMENDATION FOR TREATMENT. (a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Court-Ordered Mental Health Services is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. If the county is served by a single portal authority, the commissioner shall designate the authority to make the recommendation. If the county is not served by a single portal authority, the [~~The~~] commissioner may designate a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.

(b) The court shall direct the single portal authority or the designated facility or provider to file its recommendation with the court before the date set for the hearing.

(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.

(d) This section does not relieve a county of any of its responsibilities under other provisions of this code for the diagnosis, care, or treatment of the mentally ill.

(e) [~~The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.~~

[~~(f)~~] This section does not apply to a person for whom treatment in a private mental health facility is proposed.

SECTION 6.07. Section 36, Texas Mental Health Code (Article 5547-36, Vernon's Texas Civil Statutes), is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If the department has designated a single portal authority for the area, the [~~The~~] Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a facility of the single portal authority. If the department has not designated a single portal authority, the order shall direct the peace officer or other designated person to take the person to an appropriate in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county. The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

(e) If a single portal authority lacks the local resources to care for a person, the authority may transfer the person to a state hospital or, at the request of the authority, the judge may order the person detained in a state hospital.

SECTION 6.08. Section 39(b), Texas Mental Health Code (Article 5547-39, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Except as provided by Section 36(e) of this code, if the department has designated a single portal authority for the area, the [~~The~~] person detained in protective custody shall be detained in a facility of the single portal authority. If the department has not designated a single portal authority, the person shall be detained in an appropriate in-patient mental health facility. If there is no appropriate in-patient mental health facility available, the person shall be detained in a facility

deemed suitable by the mental health authority for that county. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than 72 hours, excepting weekends, legal holidays, and extreme weather emergencies declared pursuant to Subsection (a) of Section 38 of this code. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

SECTION 6.09. Sections 49(c) and (d), Texas Mental Health Code (Article 5547-49, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. However, the proposed patient or his attorney may orally waive the right to a jury trial if the oral waiver is made in the presence of the court.

(d) Upon good cause shown, the court may permit an oral or written [a] waiver of jury trial properly made [~~and filed~~] to be withdrawn if the waiver is withdrawn at least seven days prior to the scheduled time of the hearing, in order to permit a hearing before a jury.

SECTION 6.10. Sections 50 and 51, Texas Mental Health Code (Articles 5547-50 and 5547-51, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 50. ORDER UPON HEARING ON APPLICATION FOR TEMPORARY MENTAL HEALTH SERVICES. (a) If upon the hearing on an Application for Court-Ordered Temporary Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and

(2) as a result of that mental illness the person meets at least one of the following additional criteria:

(i) is likely to cause serious harm to himself; or

(ii) is likely to cause serious harm to others; or

(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment. If the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision.

(c) The clear and convincing evidence must include expert testimony and, unless waived, evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the jury or judge determines that the person is mentally ill and meets the criteria for court-ordered mental health services, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

(1) The judge may enter an order committing the person to a mental health facility for in-patient care. Except as provided by Subsection (g) of this section, if the department has designated a single portal authority for the area, the judge shall commit the person to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.

(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 90 days but shall not specify any shorter period of time.

(g) If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental hospital or, at the request of the authority, the judge may commit the patient directly to a state mental hospital.

Sec. 51. ORDER UPON HEARING ON APPLICATION FOR EXTENDED MENTAL HEALTH SERVICES. (a) If upon the hearing on an Application for Court-Ordered Extended Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and

(2) as a result of that mental illness the person meets at least one of the following additional criteria:

(i) is likely to cause serious harm to himself; or

(ii) is likely to cause serious harm to others; or

(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed choice as to whether or not to submit to treatment; if the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision; and,

(3) the condition of the person is expected to continue for more than 90 days; and, except where the person has already been subject to an Order for Extended Mental Health Services;[;]

(4) the person has either:

(i) received in-patient mental health services under court order pursuant to this code for at least 60 consecutive days within the 12 months immediately preceding the hearing; or

(ii) received in-patient mental health services under court order pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, [~~1965, as amended;~~] for at least 60 consecutive days within the 12 months immediately preceding the hearing.

(c) The clear and convincing evidence must include expert testimony and evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the judge or jury determines that the person is mentally ill and meets the criteria for court-ordered mental health services for an extended period, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

(1) The judge may enter an order committing the person to a mental health facility for in-patient care. Except as provided by Subsection (g) of this section, if the department has designated a single portal authority for the area, the judge shall commit the person to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.

(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 12 months but shall not specify any shorter period of time.

(g) If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental hospital or, at the request of the authority, the judge may commit the patient directly to a state mental hospital.

SECTION 6.11. Section 58, Texas Mental Health Code (Article 5547-58, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 58. DESIGNATION OF IN-PATIENT MENTAL HEALTH FACILITY. (a) In the Order for Temporary Mental Health Services or Order for Extended Mental Health Services specifying in-patient care, the court shall commit the patient to a designated mental health facility. Except as provided by Subsection (b) of this section, if the department has designated a single portal authority for the area, the court shall commit the patient to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.

(b) If a single portal authority lacks the local resources to care for a patient, the court, at the request of the authority, shall commit the person to a mental health facility designated by the authority.

(c) A court may not commit a patient to an in-patient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 6 of this code.

SECTION 6.12. Sections 67(a) and (c), Texas Mental Health Code (Article 5547-67, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Before the furlough or discharge of a patient, the head of the mental health facility shall, in consultation with the patient and the mental health authority in the area in which the patient will live after discharge, and in accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical needs of the client. A patient to be discharged may refuse the services provided for by this section. Involvement of the mental health authority in discharge planning shall not apply to the furlough or discharge of a patient from a private mental health facility.

~~[(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.]~~

SECTION 6.13. Sections 73(a) and (b), Texas Mental Health Code (Article 5547-73, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (b) of this section, the [~~The~~] head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:

(1) Voluntary Admission

(2) Emergency Detention, Temporary Detention, or Protective Custody

(3) Court-Ordered Temporary Mental Health Services

(4) Court-Ordered Extended Mental Health Services

(b) The head of an in-patient mental health facility operated by a community center or other entity designated by the department to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 6 of this code. Nothing in this code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

SECTION 6.14. Section 75, Texas Mental Health Code (Article 5547-75, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 75. TRANSFER TO STATE MENTAL HOSPITAL OR SINGLE PORTAL AUTHORITY FACILITY. (a) The department may transfer a patient from one state mental hospital to another or, with the consent of the authority, to a facility of a single portal authority, whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

(b) If the department has designated a single portal authority for an area, the [~~The~~] head of an in-patient mental health facility, upon notice to the committing court and to the authority, may for any reason transfer an involuntary patient to a facility of the single portal authority. If the department has not designated a single portal authority for the area, the head of an in-patient mental health facility, upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department; provided, however, that if the person suffers from mental retardation as well as mental illness, the facility may not transfer the person to a mental health facility operated by the Texas Department of Mental Health and Mental Retardation unless the commissioner of the department has determined that space is available in a unit of a departmental facility specifically designed to serve such persons. The head of the in-patient mental health facility shall obtain such determination prior to initiating the transfer.

(c) A single portal authority may transfer a patient from one authority facility to another whenever the transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

(d) The department shall maintain an appropriate number of hospital-level beds for mentally retarded persons who are committed for court-ordered mental health services to meet the needs of the single portal authorities. The number of beds maintained must be based on the previous year's need.

SECTION 6.15. Section 81, Texas Mental Health Code (Article 5547-81, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) In addition to the rights provided by Subsection (a) of this section, the department shall notify each adult patient of the patient's right to have the department notify his family prior to discharge or release if the patient grants permission. If the patient grants permission for notification, the department or facility shall make a reasonable attempt to give the patient's family prior notice of the patient's release or discharge.

SECTION 6.16. Sections 88 and 90, Texas Mental Health Code (Articles 5547-88 and 5547-90, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 88. LICENSE REQUIRED. (a) Except as provided by Subsection (b) of this section, 90 [~~Ninety~~] days after the effective date of this code, no person or

political subdivision may operate a mental hospital and no community center or other entity designated by the department to provide mental health services may operate a mental health facility that provides court-ordered mental health services unless licensed to do so by the department or the Texas Department of Health.

(b) A mental health facility operated by the department or by an agency of the United States is not required to obtain a license under this chapter.

(c) If a mental hospital licensed under this chapter is designated by the department to provide mental health services, the hospital is not required to obtain an additional license to provide court-ordered mental health services.

Sec. 90. APPLICATION FOR LICENSE. (a) Application for license to operate a private mental hospital or for a community center or other entity designated by the department to provide mental health services to operate a mental health facility that provides court-ordered in-patient mental health services shall be made on forms prescribed by the department. The department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of hospital care and treatment of mental patients;

(3) the names and addresses of the owners of the hospital, including the officers, directors, and principal stockholders if the owner is a corporation or other association;

(4) the names and addresses of the members of the board of trustees of the community center or the names and addresses of the directors of the entity designated by the department to provide mental health services;

(5) the bed capacity to be authorized by the license;

(6) [~~(5)~~] the number, duties, and qualifications of the professional staff;

(7) [~~(6)~~] a description of the equipment and facilities of the hospital or mental health facility; and

(8) [~~(7)~~] such other information as the department may require, which may include affirmative evidence of ability to comply with such standards, rules, and regulations as the department may prescribe.

(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital or mental health facility, describing the buildings and grounds and the uses intended to be made of the various portions of the premises. The board shall adopt by rule a fee schedule for the review of the plan of the premises. The board shall also adopt by rule a fee schedule for field surveys of construction plans reviewed under this section. The fee adopted by the board for a plan review or a field survey shall not exceed $650.

SECTION 6.17. Chapter 6, Texas Mental Health Code (Article 5547-88 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 88A to read as follows:

Sec. 88A. LIMITATION ON CONTRACTS. A community center or other entity designated by the department to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department or the Texas Department of Health.

SECTION 6.18. Sections 91(a) and (b), Texas Mental Health Code (Article 5547-91, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) After receipt of proper application for license and the required fees, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital, or that the community center or other entity designated by the department to provide mental health services is qualified to operate a mental health

facility that provides court-ordered in-patient mental health services, in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital or in-patient mental health facility on the premises described and for the bed capacity specified in the license. [~~However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.~~]

(b) The [~~Subject to the applicable provisions of the Texas Health Planning and Development Act, the~~] authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

SECTION 6.19. Section 92, Texas Mental Health Code (Article 5547-92, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 92. [~~APPLICATION AND LICENSE~~] FEES. (a) The board shall adopt by rule an [~~An~~] application fee and a license fee that shall accompany the application for a license to operate a mental hospital or for a community center or other entity designated by the department to provide mental health services to operate a mental health facility that provides court-ordered in-patient mental health services. If the department denies the license, only the license fee shall be returned. The department may establish staggered renewal dates and dates on which fees are due [~~The application fee is One Thousand Dollars ($1,000) plus Ten Dollars ($10) per bed. The annual license fee payable on August 31 of each year is Two Hundred Dollars ($200)~~].

(b) Fees adopted under this chapter must be based on the estimated cost to and the level of effort expended by the department to conduct the activity associated with the fee. The fees should be designed to recover 100 percent of the department's cost in granting the initial license and subsequent renewals but shall not exceed $250. The department shall annually review the fee schedules adopted under this chapter to ensure that fees charged continue to be based on the estimated costs to and the level of effort expended by the department.

(c) All [~~application fees and license~~] fees received by the department [~~State Health Department~~] under this chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the legislature, for the uses and purposes prescribed by this Act, including salaries, maintenance, travel expense, repairs, printing, and postage.

SECTION 6.20. Section 93(b), Texas Mental Health Code (Article 5547-93, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital or a facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter, the department may temporarily suspend a license for 10 days pending a hearing on the suspension order and may issue orders necessary for the welfare of the patients.

SECTION 6.21. Section 95, Texas Mental Health Code (Article 5547-95, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (d) and by adding Subsection (e) to read as follows:

(a) The department may prescribe such rules, regulations, and standards, not inconsistent with the constitution and the laws of this state, as it considers necessary and appropriate to ensure proper care and treatment of patients in private mental hospitals or mental health facilities operated by community centers or other entities

designated by the department that provide court-ordered in-patient mental health services. The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) A copy of these rules shall be sent to each licensed private mental hospital and each facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter.

(e) The department rules must encourage mental health facilities licensed under this chapter to provide in-patient mental health services in ways that are appropriate for the diversity of the state.

SECTION 6.22. Section 97(b), Texas Mental Health Code (Article 5547-97, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital or a facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter to inspect the facilities and conditions, to observe the program for care and treatment, and to question employees of the hospital or facility and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

SECTION 6.23. Section 99(b), Texas Mental Health Code (Article 5547-99, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital or a facility operated by a community center or other entity designated by the department to provide mental health services that is required to be licensed under this chapter.

SECTION 6.24. Section 44, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 44. ALTERNATIVE, FOLLOW-UP SUPPORTIVE SERVICES. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department, the mental retardation authority in the area in which the client will reside, and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

SECTION 6.25. Section 1(b), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended by amending Subdivision (6) and by adding Subdivision (8) to read as follows:

(6) "Mental health facility" includes:

(A) an inpatient or outpatient mental health facility operated by the Texas Department of Mental Health and Mental Retardation or by an entity designated by the Texas Department of Mental Health and Mental Retardation to provide mental health services, a political subdivision of the state, or any other legal entity;

(B) a community mental health and mental retardation center established under Section 3.01, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), that provides mental health services; and

(C) the identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill or drug-dependent persons.

(8) "Single portal authority" means a mental health authority designated as a single portal authority by the Texas Department of Mental Health and Mental Retardation.

SECTION 6.26. Section 10, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. (a) In the order of commitment, the court shall commit the patient to a designated:

(1) state mental health facility if the Texas Department of Mental Health and Mental Retardation has not designated a single portal authority for the area;

(2) single portal authority facility if the Texas Department of Mental Health and Mental Retardation has designated an authority for the area;

(3) private mental health facility; or

(4) [~~(3)~~] agency of the United States operating a mental health facility.

(b) If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental health facility, or at the request of the authority, the court may commit the patient directly to a state mental health facility.

SECTION 6.27. Section 3.02, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) Except as provided by this subsection, if the Texas Department of Mental Health and Mental Retardation has designated a single portal authority for the area, the court may not directly commit a person to a state mental health facility, but instead may order the person committed to a program licensed by the commission, to a federal hospital, or to a facility operated by the single portal authority. If the single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental health facility or, at the request of the authority, the court may commit the patient directly to a state mental health facility.

ARTICLE 7

SECTION 7.01. The Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 6 to read as follows:

Art. 6. REGISTRATION OF BOARDING HOMES

Sec. 6.01. DEFINITIONS. In this article:

(1) "Boarding home" means a residence or establishment that, in addition to food and shelter, provides services that meet some need beyond the basic provision of food and shelter to four or more persons who are not related to the owner or operator of the residence or establishment.

(2) "Registered boarding home" means a boarding home registered by a local mental health or mental retardation authority under this article.

(3) "Financial services" means any assistance in managing a resident's personal financial matters that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to the resident, including:

(A) cashing checks;

(B) holding funds for safekeeping in any manner; and

(C) assisting the resident in purchasing goods or services with the resident's personal funds.

(4) "Personal services" means any service other than shelter that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to a resident.

Sec. 6.02. APPLICATION TO BOARDING HOMES OPERATED BY DEPARTMENT OR AUTHORITY. A boarding home operated by the Department or a local mental health or mental retardation authority is not required to be registered under this article. However, each boarding home shall meet the standards prescribed by the appropriate authority under this article.

Sec. 6.03. POWERS AND DUTIES OF LOCAL MENTAL HEALTH OR MENTAL RETARDATION AUTHORITY. (a) Each local mental health or mental retardation authority shall:

(1) adopt guidelines relating to the registration of boarding homes;

(2) submit the guidelines to the Department for approval as provided by Section 6.04 of this article;

(3) adopt local standards for personal and financial services;

(4) register boarding homes as required by this article; and

(5) visit and inspect each registered boarding home to which the authority refers a patient or client at least annually to ensure that the home has been inspected, is in good standing with the local health and safety authorities, and is providing the personal and financial services that are appropriate for the residents' needs.

(b) The guidelines established by the local mental health or mental retardation authority must:

(1) require annual inspections of each registered boarding home to which the authority refers a patient or client as provided by Subsection (a)(5) of this section;

(2) require each registered boarding home to submit to the required annual inspection; and

(3) require each registered boarding home to comply with all applicable local health, sanitation, fire, and safety requirements.

(c) If the local mental health and mental retardation authorities in a service area are separate entities, the authorities shall adopt a memorandum of understanding to reduce duplication and clarify responsibilities in registering boarding homes in the service area.

(d) Each local mental health and mental retardation authority shall involve existing local authorities in the registration and inspection of boarding homes to the extent possible.

Sec. 6.04. SUBMISSION OF GUIDELINES TO DEPARTMENT. (a) Each local mental health or mental retardation authority shall submit the guidelines adopted under Subsection (a)(1) of Section 6.03 of this article to the Department for approval.

(b) The Department shall approve the guidelines if the guidelines:

(1) require annual inspections of each registered boarding home to which the authority refers a patient or client as provided by Section 6.03(a)(5) of this article;

(2) require each registered boarding home to submit to the required annual inspection; and

(3) require each registered boarding home to comply with all applicable local health, sanitation, fire, and safety requirements.

Sec. 6.05. WITHHOLDING FUNDS. The Department may withhold funds from a local mental health or mental retardation authority if the authority refers patients or clients to a boarding home that is not registered by the authority.

Sec. 6.06. PROVISION OF SERVICES BY LOCAL AUTHORITY. (a) If a local mental health or mental retardation authority registers a boarding home, the authority shall make the services required by Section 4.03 of this Act available to the residents who are otherwise eligible for mental health and mental retardation services.

(b) The authority shall notify the residents and owner or operator of the registered boarding home that the required services are available. The authority shall also:

(1) require the home to post the 24-hour emergency crisis number in a conspicuous place in the home; and

(2) allow boarding home staff and owners to participate in the training provided to the staff of the local authority if the training is applicable to the care of the residents in the boarding home or to the operation of the boarding home.

(c) A local mental health or mental retardation authority may not:

(1) charge a fee for providing training services to the staff of a boarding home; or

(2) charge a boarding home a fee for providing services to the residents of the home.

ARTICLE 8

SECTION 8.01. Title 9, Human Resources Code, is amended by adding Chapter 134 to read as follows:

CHAPTER 134. INTERAGENCY COUNCIL FOR GENETIC SERVICES

Sec. 134.001. (a) The Interagency Council for Genetic Services is established.

(b) The council consists of:

(1) a representative of the Texas Department of Mental Health and Mental Retardation, appointed by the commissioner of mental health and mental retardation;

(2) a representative of the Texas Department of Health, appointed by the commissioner of health;

(3) a representative of the Texas Department of Human Services, appointed by the commissioner of human services;

(4) a representative of The University of Texas health science centers, appointed by the chancellor of The University of Texas System;

(5) a representative of the public and private entities that contract with the Texas Department of Health to provide genetic services, elected from their membership; and

(6) two consumers of genetic services, family members of consumers of genetic services, or representatives of consumer groups related to the provision of genetic services, appointed by the governor.

(c) The members provided for by Subdivisions (5) and (6) of Subsection (b) of this section serve two-year terms and may be reappointed or reelected for subsequent terms. A representative of the Texas Department of Mental Health and Mental Retardation, Texas Department of Health, Texas Department of Human Services, or The University of Texas health science centers serves at the pleasure of his respective commissioner or chancellor or until termination of his employment with the entity he represents.

(d) The members of the council shall annually elect one member to serve as chairperson.

(e) The council shall meet at least quarterly. Any actions taken by the council must be approved by a majority vote of the members present.

Sec. 134.002. APPLICATION OF SUNSET ACT. The Interagency Council for Genetic Services is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the council is abolished and this chapter expires September 1, 1989.

Sec. 134.003. STAFF. (a) The council may select and use lay and professional advisors as necessary.

(b) The Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, and The University of Texas health science centers shall share the cost of providing clerical and advisory support staff to the council.

Sec. 134.004. DUTIES. The council shall:

(1) survey current resources for genetic services in the state;

(2) initiate a scientific evaluation of the current and future needs for the services;

(3) develop a comparable data base among providers that will permit the evaluation of cost-effectiveness and the value of different genetic services and methods of service delivery;

(4) promote a common statewide data base to study the epidemiology of genetic disorders;

(5) assist in coordinating statewide genetic services for all state residents;

(6) increase the flow of information among separate providers and appropriation authorities; and

(7) develop guidelines to monitor the provision of genetic services, including laboratory testing.

Sec. 134.005. USE OF FEDERAL FUNDS. If the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, or The University of Texas health science centers receive federal funds to be used only to coordinate and plan statewide genetic services, the department or system shall transfer the funds to the council to be used for the purposes for which the funds were received.

Sec. 134.006. ANNUAL REPORTS. The council shall annually submit a progress report to the boards of the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, and Texas Department of Human Services and to the board of regents of The University of Texas System.

Sec. 134.007. REPORT TO 71ST LEGISLATURE. (a) Not later than February 1, 1989, the council shall submit a report to the 71st Legislature recommending improvements to the present system of providing genetic services. The report must also detail any actions taken by the council to improve the provision of genetic services. The report may include recommendations to improve the operation of the council.

(b) This section expires September 1, 1989.

SECTION 8.02. Section 26, Mentally Retarded Persons Act, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. RULES AND REGULATIONS. (a) The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

(b) The department shall promulgate rules and regulations to ensure that a client, parent of a minor or guardian of the person has the opportunity to participate in planning with regard to the client's treatment and habilitation, including any decision to recommend or effect placement of the client in an alternative treatment setting. The rules and regulations shall include procedures for informing clients, parents and guardians of the due process provisions in Section 43 of this Act, including the right to an administrative hearing and judicial review in county court of proposed transfers or discharges.

SECTION 8.03. Subchapter G, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Section 27A to read as follows:

Sec. 27A. REQUIREMENT TO OBTAIN CONSENT. The department or a community center shall obtain legally adequate consent before providing mental retardation services. However, if the department or a community center has made all reasonable efforts to obtain legally adequate consent and cannot do so, nonresidential mental retardation services, including a comprehensive diagnosis and evaluation, can be provided. The department shall promulgate rules to define what shall constitute all reasonable efforts to obtain legally adequate consent and how these efforts shall be documented.

SECTION 8.04. Section 39, Mentally Retarded Persons Act, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 39. BY SERVICE PROVIDER. The service provider shall transfer, furlough the client to alternate placement, or discharge the client pursuant to this subchapter if the service provider determines:

(1) the placement of the client in the facility is no longer appropriate to the person's individual needs; or

(2) [~~When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that~~] the client can be better treated and habilitated in another setting [~~facility~~]; and

(3) placement in another setting, that can better treat and habilitate the client, has been secured[~~, the service provider shall transfer or discharge the client pursuant to this subchapter~~].

SECTION 8.05. (a) Section 57, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) Notwithstanding the provisions of Subsections (a) through (i) of this section, the department may disclose a person's educational records to a school district that is or will be providing educational services to the person without first obtaining that person's written consent.

(b) Subsection (j), Section 57, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), as added by this section, takes effect September 1, 1988.

SECTION 8.06. Subchapter F, Chapter 23, Title 110B, Revised Statutes, is amended by adding Section 23.508 to read as follows:

Sec. 23.508. SERVICE OF CERTAIN MENTAL HEALTH AND MENTAL RETARDATION EMPLOYEES. (a) Except as provided by Subsection (i) of this section, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Teacher Retirement System of Texas for which deposits are maintained in an active member account immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Teacher Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became or becomes a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of the Texas Department of Mental Health and Mental Retardation;

(3) is not a retiree of the Teacher Retirement System of Texas; and

(4) has no intervening employment between the member's previous position included in the coverage of the Teacher Retirement System of Texas and the member's employment by the Texas Department of Mental Health and Mental Retardation.

(c) The Texas Department of Mental Health and Mental Retardation shall certify employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Teacher Retirement System of Texas.

(d) Except as provided by Subsection (i) of this section, as soon as practicable after receipt of a certification of eligibility under Subsection (c) of this section, the Employees Retirement System of Texas shall determine eligibility and notify the Teacher Retirement System of Texas. On notification, the Teacher Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's service credit in and compensation subject to contributions to the Teacher Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state contribution account determined by the actuary of the Teacher Retirement System of Texas to be the amount required

neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) of this section cancels the service credit and terminates the membership in the Teacher Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d) of this section, the retirement system shall grant the member for whom the amounts were transferred the credit provided by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Teacher Retirement System of Texas.

(h) The legislature may appropriate to the Employees Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) of this section.

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) of this section, together with any appropriation made available as provided by Subsection (h) of this section, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Teacher Retirement System of Texas makes the determination provided by Subdivision (1) of Subsection (i) of Section 33.404 of this title.

SECTION 8.07. Subchapter E, Chapter 33, Title 110B, Revised Statutes, is amended by adding Section 33.404 to read as follows:

Sec. 33.404. CERTAIN MENTAL HEALTH AND MENTAL RETARDATION SERVICE. (a) Except as provided by Subsection (i) of this section, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Employees Retirement System of Texas for which deposits are maintained in an active member account, immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Employees Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date and on the date of termination with the department had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became or becomes a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of a school district;

(3) has normal duties requiring the member to provide educational services to school-age students;

(4) is not a retiree of the Employees Retirement System of Texas; and

(5) has no intervening employment between the member's previous employment by the Texas Department of Mental Health and Mental Retardation and the member's employment by a school district.

(c) The Texas Department of Mental Health and Mental Retardation shall certify the employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Employees Retirement System of Texas.

(d) Except as provided by Subsection (i) of this section, as soon as practicable after receipt of a certification of eligibility under Subsection (c) of this section, the

Teacher Retirement System of Texas shall determine eligibility and notify the Employees Retirement System of Texas. On notification, the Employees Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's credit in and compensation subject to contributions to the Employees Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state accumulation account determined by the actuary of the Employees Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) of this section cancels the service credit and terminates the membership in the Employees Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d) of this section, the retirement system shall grant the member for whom the amounts were transferred the credit authorized by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Employees Retirement System of Texas.

(h) The legislature may appropriate to the Teacher Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) of this section.

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) of this section, together with any appropriation made available as provided by Subsection (h) of this section, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Employees Retirement System of Texas makes the determination provided by Subdivision (1) of Subsection (i) of Section 23.508 of this title.

SECTION 8.08. Section 9.01(a)(6), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) "Political subdivision" means a county, municipality, school district, [~~or~~] junior college district, or community center established or operating under Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).

SECTION 8.09. Section 4, Chapter 270, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

Sec. 4. DISPOSITION OF PROCEEDS. (a) The proceeds of the sale authorized by Section 1 of this Act are allocated as provided by this section.

(b) Fifty percent [~~The first $40 million~~] shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(c) Fifty percent [~~The next $18,500,000~~] is appropriated to the Texas Department of Mental Health and Mental Retardation for the biennium ending August 31, 1989 [~~1987~~]. That portion of the proceeds [~~amount~~] shall first be used for community center construction and renovation as provided in Section 3.11, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), necessary life safety code improvements, and the purchase of land and construction of facilities for a rehabilitation center to replace the one authorized for sale in Section 1 of this Act. Any balance may be used for other construction and improvements as approved by the Texas Board of Mental Health and Mental Retardation, or for residential contract services for juveniles.

[~~(d) Any balance remaining after the preceding allocations are satisfied shall be deposited in the State Treasury to the credit of the General Revenue Fund.~~]

SECTION 8.10. Section 3, Chapter 324, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

Sec. 3. Notwithstanding the provisions in Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, regarding lease-purchase agreements, the Tarrant County mental health and mental retardation community center is not required to enter into a lease-purchase agreement with the department for the construction of the psychiatric treatment facility authorized by Section 2 of this Act and for which funds have been appropriated by the 68th Legislature, Regular Session. As prescribed by Section 2.13, Texas Mental Health and Mental Retardation Act, the department may contract with the Tarrant County mental health and mental retardation community center to lease to the community center the facility authorized to be constructed under Section 2 of this Act for the purpose of operating a psychiatric treatment facility. Notwithstanding Section 3.11(f), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), appropriations of state funds for the actual operation of the facility may not exceed 85 percent of the total operating budget of the facility [~~Subsection (d) of Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, applies to the use of state funds by the community center for the operation of the psychiatric treatment facility~~].

SECTION 8.11. Section 21(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is repealed.

SECTION 8.12. Chapter 61, Education Code, is amended by adding a new Subchapter K to read as follows:

SUBCHAPTER K. REPAYMENT OF CERTAIN STUDENT LOANS.

Sec. 61.601. DEFINITIONS. In this subchapter:

(1) "Physical therapist" means a person licensed under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes).

(2) "Residential care facility" means a facility operated by the Texas Department of Mental Health and Mental Retardation that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

Sec. 61.602. REPAYMENT AUTHORIZED. The coordinating board may provide, using funds appropriated for that purpose and in accordance with this subchapter and rules of the board, assistance in repayment of student loans for physical therapists who apply and qualify for the assistance.

Sec. 61.603. ELIGIBILITY. (a) To be eligible to receive repayment assistance, a physical therapist must apply to the coordinating board and have completed at least one year of practice as a physical therapist in a residential care facility.

(b) The coordinating board may by rule provide for repayment assistance on a pro rata basis for physical therapists practicing at least part-time in a residential care facility.

Sec. 61.604. LIMITATION. Upon qualifying for such assistance, a physical therapist may receive repayment assistance grants for each year of practice in a residential care facility, up to a maximum of five years.

Sec. 61.605. ELIGIBLE LOANS. (a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physical therapist through a lender in Texas.

(b) The coordinating board may not provide repayment assistance for a student loan that is in default at the time of the physical therapist's application.

Sec. 61.606. REPAYMENT. (a) The coordinating board shall deliver any repayment made under this subchapter in a lump sum directly to the lender.

(b) A repayment made under this subchapter may be applied only to the principal amount of the loan.

Sec. 61.607. ADVISORY COMMITTEE. The coordinating board may appoint an advisory committee from outside the board's membership to assist the board in performing its duties under this subchapter.

Sec. 61.608. ACCEPTANCE OF FUNDS. The coordinating board may accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 61.609. RULES. (a) The coordinating board shall adopt rules necessary for the administration of this subchapter, including a rule that sets a maximum amount of repayment assistance that may be received by a physical therapist in one year.

(b) The coordinating board shall distribute to each institution of higher education, the Texas Department of Mental Health and Mental Retardation, and appropriate professional associations copies of the rules adopted under this section and pertinent information in this subchapter.

ARTICLE 9

SECTION 9.01. Title 7, Human Resources Code, is amended by adding Chapter 114 to read as follows:

CHAPTER 114. INTERAGENCY COUNCIL ON AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS

Sec. 114.001. SHORT TITLE. This chapter may be cited as the Interagency Council on Autism and Pervasive Developmental Disorders Act of 1987.

Sec. 114.002. DEFINITIONS. In this chapter:

(1) "Autism and other pervasive developmental disorders" means a subclass of mental disorders characterized by distortions in the development of multiple basic psychological functions that are involved in the development of social skills and language, as defined by the Diagnostic and Statistical Manual, 3rd Edition.

(2) "Council" means the Interagency Council on Autism and Pervasive Developmental Disorders.

Sec. 114.003. INTERAGENCY COUNCIL. (a) The Interagency Council on Autism and Pervasive Developmental Disorders is established.

(b) The council is composed of:

(1) two public members who are family members of a person with autism or some other pervasive developmental disorder, appointed by the governor with the advice and consent of the senate; and

(2) one representative from each of the following state agencies, appointed by the commissioner of the respective agency:

(A) Texas Department of Mental Health and Mental Retardation;

(B) Texas Department of Health;

(C) Texas Department of Human Services;

(D) Central Education Agency; and

(E) Texas Rehabilitation Commission.

(c) The commissioner of each state agency shall appoint as that agency's representative the person in the agency who is most familiar with and best informed about autism and other pervasive developmental disorders.

(d) The public members appointed by the governor serve two-year terms that expire on February 1 of each odd-numbered year. The public members may be reappointed. A representative of a state agency serves at the pleasure of the commissioner of that agency. The members may not receive compensation or reimbursement for expenses.

(e) The members of the council shall annually elect one member to serve as chairperson.

(f) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(g) Any actions taken by the council must be approved by a majority vote of the members present.

(h) The council shall establish policies and adopt rules to carry out its duties under this chapter.

Sec. 114.004. STAFF SUPPORT. The agencies represented on the council shall provide staff support to the council from among the agency staff who are responsible for coordinating services to persons with autism or other pervasive developmental disorders or to those persons' families. The council is not authorized to expend any funds on staff salaries.

Sec. 114.005. ADVISORY TASK FORCE. (a) The council shall establish an advisory task force composed of professionals, advocacy groups, and family members of persons with autism or other pervasive developmental disorders. The council shall appoint as many members to the task force as the council considers necessary to assist the council in performing its duties.

(b) The task force shall elect its own chairperson and shall meet and serve in accordance with council rules. The council may divide the task force into regional committees to assist the council in community level program planning and implementation.

Sec. 114.006. STATE PLAN. (a) The council shall develop a state plan to provide services to persons with autism or other pervasive developmental disorders to ensure that:

(1) the needs of those persons and their families are addressed statewide and that all available resources are coordinated to meet those needs;

(2) within existing resources, the full range of services that are available through existing state agencies are offered to those persons throughout their lives to the maximum extent possible;

(3) personnel training needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered to private sources to encourage the sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for reviewing individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations on the implementation of this chapter. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. On approval of the governing body of the agency, each agency affected by a council recommendation shall implement the recommendation. If an agency does not have sufficient funds to implement a recommendation, the agency shall request funds for that purpose in its next budget proposal.

(c) The council may not expend funds to implement the plant.

Sec. 114.007. DUTIES. (a) The council shall provide recommendations to the Texas Department of Mental Health and Mental Retardation as the state agency primarily responsible for implementing this chapter, including recommendations relating to the use of funds appropriated to the department to provide services to persons with autism or other pervasive developmental disorders.

(b) The council with the advice of the advisory task force shall address contemporary issues affecting services available to persons with autism or other pervasive developmental disorders in this state, including:

(1) successful intervention and treatment strategies, including transitioning;

(2) personnel preparation and continuing education;
(3) referral, screening, and evaluation services;
(4) day care, respite care, or residential care services;
(5) vocational and adult training programs;
(6) public awareness strategies;
(7) contemporary research;
(8) early identification strategies;
(9) family counseling and case management; and
(10) recommendations for monitoring autism service programs.

(c) The council with the advice of the advisory task force shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention and treatment services for all persons with autism or other pervasive developmental disorders. The council may develop and recommend legislation to the legislature or comment on pending legislation that affects those persons.

(d) The council shall identify and monitor apparent gaps in services currently available from various state agencies for persons with autism or other pervasive developmental disorders and shall advocate improvements on behalf of those persons.

Sec. 114.008. REPORT. (a) The agencies represented on the council and the public members shall report to the council any requirements identified by the agency or person to provide additional or improved services to persons with autism or other pervasive developmental disorders.

(b) The council shall develop a strategy for establishing new programs to meet the requirements identified by the agencies and the public members.

Sec. 114.009. PROGRAM GUIDELINES. The council shall develop specific program guidelines for:

(1) instructional or treatment options;
(2) frequency and duration of services;
(3) ratio of staff to affected persons;
(4) staff composition and qualifications;
(5) eligibility determination; and
(6) other program features designed to ensure the provision of quality services.

Sec. 114.010. FUNDING REQUESTS FOR PROGRAMS. (a) A public or private service provider may apply for available funds to provide a program of intervention services for eligible persons with autism or other pervasive developmental disorders in areas of identified needs.

(b) To apply for funds, a person must submit a grant request to the council.

(c) The council shall adopt rules governing the submission and processing of funding requests.

Sec. 114.011. APPROVAL CRITERIA. (a) The council shall review each request for program funding on a competitive basis and shall consider:

(1) the extent to which the program would meet identified needs;
(2) the cost of initiating the program, if applicable;
(3) whether other funding sources are available;
(4) the proposed cost of the services to the client or the client's family; and
(5) the assurance of quality services.

(b) The council may not approve a funding request for a new program unless the service provider agrees to:

(1) operate and maintain the program within the guidelines established by the council;
(2) develop for each person with autism or other pervasive developmental disorders an individualized developmental plan that:

(A) includes family participation and periodic review and reevaluation; and

(B) is based on a comprehensive developmental evaluation conducted by an interdisciplinary team;

(3) provide services to meet the unique needs of each person with autism or other pervasive developmental disorders as indicated by the person's individualized developmental plan; and

(4) develop a method in accordance with rules adopted by the council and approved by the council to respond to individual complaints relating to services provided by the program.

(c) The council shall develop with the Texas Department of Mental Health and Mental Retardation procedures for allocating available funds to programs approved under this section.

(d) This chapter does not affect the existing authority of a state agency to provide services to a person with autism or other pervasive developmental disorders if the person meets the eligibility criteria established by this chapter. The council may modify the program standards if the council considers the modifications necessary for a particular program.

Sec. 114.012. FEES FOR SERVICES. (a) A service provider may charge a fee for services that is based on the client's or family's ability to pay. The fee must be used to offset the cost of providing or securing the services. If a service provider charges a fee, the provider must charge a separate fee for each type of service. In determining a client's or family's ability to pay for services, the provider must consider the availability of financial assistance or other benefits for which the client or family may be eligible.

(b) A state agency may charge a fee for services provided by the agency under this chapter that is based on the client's or family's ability to pay.

Sec. 114.013. APPLICATION OF SUNSET ACT. The Interagency Council on Autism and Pervasive Developmental Disorders is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the council is abolished and this chapter expires on the date established by law for the abolishment of the Texas Department of Mental Health and Mental Retardation.

ARTICLE 10

SECTION 10.01. The Alcohol and Substance Abuse Services Oversight Act is adopted to read as follows:

Sec. 1.01. SHORT TITLE. This Act may be cited as the Alcohol and Substance Abuse Services Oversight Act.

Sec. 1.02. DEFINITIONS. In this Act:

(1) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(2) "Committee" means the Alcohol and Substance Abuse Services Oversight Committee.

(3) "Alcohol or substance abuse services" means treatment, prevention and education services, but specifically excludes law enforcement activities.

(4) "State agency" means a public entity in the executive branch of state government eligible under law to receive an appropriation, but does not include the Office of the Governor.

Sec. 1.03. COMMITTEE. (a) The Alcohol and Substance Abuse Services Oversight Committee is established. The committee consists of:

(1) three members of the senate, appointed by the lieutenant governor;

(2) three members of the house of representatives, appointed by the speaker of the house; and

(3) three persons appointed by the governor.

(b) Committee members serve two-year terms.

(c) The committee shall elect a presiding officer and an assistant presiding officer from its membership. The committee shall meet at the call of the presiding officer or at the request of a majority of the members.

(d) The committee shall be staffed by existing legislative and governor's office staff. The committee may require the commission to provide clerical support and any other assistance to the committee.

Sec. 1.04. POWERS AND DUTIES OF COMMITTEE. The committee shall:

(1) adopt necessary rules, including rules relating to:

(A) the minimum information each plan required under Section 1.06 of this Act must contain;

(B) deadlines for submitting each plan;

(C) procedures and deadlines for reviewing and evaluating each plan; and

(D) criteria for using the budget execution authority provided by this Act;

(2) set out the duties of the commission in implementing this Act; and

(3) evaluate and approve, disapprove, or amend each plan submitted under Section 1.06 of this Act.

Sec. 1.05. POWERS AND DUTIES OF COMMISSION. (a) The commission is designated as the state authority for coordinating services and assuring financial accountability for all alcohol and substance abuse funds expended by state entities.

(b) The commission shall provide assistance to each state entity required to submit a plan under Section 1.06 of this Act. After each plan has been submitted, the commission shall prepare a separate plan that consolidates and coordinates the other plans in an effort to limit duplication and to maximize the effective use of funds. The commission shall submit to the committee separate reports on each agency's plan and on the consolidated plan prepared by the commission.

(c) The commission shall develop, with the assistance of the affected state agencies, a plan for the use of federal funds for alcohol or substance abuse services received by the commission, the Central Education Agency, and the criminal justice agencies. The commission shall submit this plan to the committee.

(d) The committee may require a state agency that is required to submit a plan under Section 1.06 of this Act to submit to the committee financial reports, audit results, service criteria, and other necessary data. The committee may require the commission to collect and evaluate any such data, and the committee may authorize or require the commission to perform site visits.

Sec. 1.06. PREPARATION AND SUBMISSION OF PLAN. (a) Each state agency that provides alcohol or substance abuse services or expends state or federal funds for alcohol or substance abuse services shall prepare and submit to the commission a strategic plan detailing how the agency intends to provide the services or expend the funds during the next fiscal biennium.

(b) Each plan submitted by the Texas Department of Mental Health and Mental Retardation must include a designation of core services and accountability measures for community mental health or mental retardation centers.

(c) In preparing its plan for each biennium, each agency shall conduct public meetings and take public testimony.

(d) Each agency shall submit the plan required by this section in accordance with committee rules relating to the information the plan must contain, the date on which the plan must be submitted, and any other relevant requirements.

Sec. 1.07. REVIEW OF PLANS. (a) The committee shall review and evaluate the plan submitted by each state agency and the consolidated plan prepared by the commission. In reviewing and evaluating a plan, the committee shall consider whether or not the plan meets the goals of:

(1) providing accountability for funds expended;

(2) maximizing funds spent for services and minimizing funds spent on administrative costs;

(3) providing community based services; and

(4) coordinating and planning for improved and cost-effective state services for all types of clients.

(b) The committee may approve, amend, or disapprove any plan submitted to the committee or may prepare a new plan or plans if necessary to accomplish the goals prescribed by Subsection (a) of this section. Once the committee has designated the manner in which a state agency may expend funds, the agency may not expend state or federal funds for alcohol or substance abuse services in a manner not approved by the committee.

(c) If approved by the vote of at least six members, the committee may authorize an emergency transfer of funds from one state agency to another if the committee determines that:

(1) the funds can be used in a more cost-effective manner by the second agency and failure to transfer the funds will result in diminished services;

(2) the transfer is necessary to accomplish the goals prescribed by Subsection (a) of this section and failure to transfer the funds will result in diminished services;

(3) an agency failed to submit a plan as prescribed by this Act or submitted an insufficient plan and because of the failure or insufficiency the agency does not have authority to expend funds and the lack of authority will result in diminished services; or

(4) the transfer is necessary to prevent the loss of federal funds.

(d) Agencies that receive federal funds for substance abuse services from the Office of the Governor shall include those funds in the plans prescribed by this Act, but the Committee's authority to designate the manner in which an agency may expend funds and to transfer funds between state agencies does not apply to federal substance abuse funds received and distributed by the Office of the Governor.

(e) The office of the Governor shall submit to the Committee a report on all federal funds received for alcohol and substance abuse services and plans for their expenditure. The report shall include all federal funds received by the Governor's office for alcohol and substance abuse services and for law enforcement activity relating to alcohol and substance abuse. The Committee may review and comment on the Governor's Office's plans for expenditures of these funds.

(f) The Oversight Committee is the legislative review body for federal substance abuse funds if the Legislature is not in session when legislative review of those funds is required.

Sec. 1.08. APPLICATION OF SUNSET ACT. The Alcohol and Substance Abuse Services Oversight Committee is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the council is abolished and this Act expires on the date established by law for the abolishment of the Texas Commission on Alcohol and Drug Abuse.

SECTION 10.02. Not later than September 15, 1987, the lieutenant governor, speaker of the house of representatives, and governor shall appoint the members of the Alcohol and Substance Abuse Services Oversight Committee.

SECTION 10.03. (a) Not later than October 1, 1987, each state agency required to submit a plan under Section 1.06, Alcohol and Substance Abuse Services Oversight Act, must submit its initial plan to the Texas Commission on Alcohol and Drug Abuse. The plan must cover the fiscal biennium that begins September 1, 1987.

(b) Not later than November 1, 1987, the Texas Commission on Alcohol and Drug Abuse shall prepare the consolidated plan prescribed by Section 1.05, Alcohol and Substance Abuse Services Oversight Act, prepare the reports on the plan

submitted by each agency, and submit each report and plan to the Alcohol and Substance Abuse Services Oversight Committee.

(c) Not later than December 1, 1987, the Alcohol and Substance Abuse Services Oversight Committee shall make its final determinations on the plans submitted by the Texas Commission on Alcohol and Drug Abuse.

(d) Prior to expenditure of federal funds received for alcohol and substance abuse services and law enforcement activities relating to alcohol and substance abuse, the Office of the Governor shall submit to the committee the report required by Section 1.07(d) of this Act.

(e) If necessary, the Alcohol and Substance Abuse Services Oversight Committee may alter or waive any deadlines prescribed by this section.

SECTION 10.04. The Alcohol and Substance Abuse Services Oversight Committee shall evaluate the system established by the Alcohol and Substance Abuse Services Oversight Act and the general alcohol and substance abuse services system in this state. Not later than February 1, 1989, the committee shall submit a report to the legislature evaluating the systems and recommending any necessary changes.

ARTICLE 11

SECTION 11.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1987.

SECTION 11.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
SENATE CONCURRENT RESOLUTION 68

Senator Farabee submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.C.R. 68** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FARABEE	MADLA
BROOKS	GIVENS
URIBE	SCHOOLCRAFT
EDWARDS	HEFLIN
ZAFFIRINI	J. HARRIS
On the part of the Senate	On the part of the House

SENATE CONCURRENT RESOLUTION

WHEREAS, The Texas Legislature is dedicated to assuring the quality of Texas' services to persons with mental illnesses; and

WHEREAS, In 1981, the Texas Department of Mental Health and Mental Retardation signed a Settlement Agreement under the federal court suit R.A.J. v. Miller; and

WHEREAS, The Texas Department of Mental Health and Mental Retardation has been monitored by the court-appointed R.A.J. Review Panel for compliance with the Settlement Agreement; and

WHEREAS, The Texas Legislature finds that this external monitoring has improved the state's mental health services by focusing the Department's and the Legislature's attention on areas needing improvement; and

WHEREAS, If the federal court finds the Texas Department of Mental Health and Mental Retardation in substantial compliance with major requirements of the Settlement Agreement, the federal court will dismiss the R.A.J. Review Panel in September 1987 and disengage from active monitoring; and

WHEREAS, The federal court has ordered that a plan for an external monitoring system be submitted by March 1987 and that the monitoring system be fully operational by March 1988; now, therefore be it

RESOLVED, That the Legislature establish the division of oversight for mental health services under the Office of the Governor or his designee immediately upon the federal court's dismissal of R.A.J. Review Panel and disengagement from active monitoring; and be it further

RESOLVED, That the division be charged with monitoring state-supported mental health services for adequacy of care and for compliance with all applicable laws, with court orders, and with Texas Department of Mental Health and Mental Retardation regulations; and, be it further

RESOLVED, That the 70th Legislature appropriate funds to ensure sufficient staffing, travel, and operational activities of the Division; and be it further

RESOLVED, That the division be staffed by a person or persons with knowledge, education, and expertise in mental health treatment and in public mental health systems; and be it further

RESOLVED, That the division have access to records of state-supported mental health programs as it deems necessary to perform its duties; and, be it further

RESOLVED, That the division have authority and responsibility to request specific data collection or data summaries as it deems necessary to ensure ongoing compliance with areas needing improvement; and be it further

RESOLVED, That all mental health records and communications released to the division remain confidential and privileged according to state law; and be it further

RESOLVED, That the division investigate those individual client complaints received by the division to determine if they indicate systemic issues and that the division refer other individual complaints to the appropriate internal and external client advocacy systems; and be it further

RESOLVED, That the division make formal written reports of its findings at least semiannually to the Governor, the Lieutenant Governor, the Speaker, the members of the Legislative Budget Board, the members of the Senate Health and Human Resources Committee, the members of the House Public Health Committee, the Board of the Texas Department of Mental Health and Mental Retardation, and the parties and the Court in R.A.J. v. Miller; and be it further

RESOLVED, That the division's formal written reports be public record.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 1831 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1831, Relating to the collection of certain fees, charges, and deposits by institutions of higher education and accounting for certain income as educational and general funds.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1831** on page 43 by striking SECTION 36 and renumbering the remaining SECTIONS as appropriate.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1831** as follows:

On page 18, strike Sec. 51.009 as added by SECTION 37 and substitute in lieu thereof the following:

Sec. 51.009. CERTAIN INCOME ACCOUNTED FOR AS EDUCATIONAL AND GENERAL FUNDS. Each of the following shall be accounted for as educational and general funds: net tuition, special course fees charged under Sec. 54.051 (e) and (1), Education Code, lab fees, student teaching fees, hospital and clinic fees, organized activity fees, proceeds from the sale of educational and general equipment, and indirect cost recovery fees.

The amendment was read and was adopted viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1831** on page 4, beginning on line 8 by deleting the underlined language through line 23.

BARRIENTOS
CAPERTON

The amendment was read and was adopted viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 4

Amend **H.B. 1831** as follows:

1. Delete Sec. 54.505 on page 4 and substitute in lieu thereof the following: "Sec. 54.505. VEHICLE REGISTRATION FEES AND OTHER FEES RELATED TO PARKING AND TRAFFIC [~~MANDATORY STUDENT SERVICES FEES IN CASES OF CONCURRENT ENROLLMENT IN MORE THAN ONE INSTITUTION WITHIN PUBLIC SYSTEMS OF HIGHER EDUCATION~~]. (a) The governing board of each institution of higher education may charge a reasonable fee to students, faculty, and staff for registration of a vehicle under Section 51.202 of this code [~~For the purposes of this section "mandatory~~

~~student services fees" means health and hospital services, intramural and intercollegiate athletics, student union, shuttle bus service, and any other student activities and services specifically authorized, approved, and mandated by the appropriate governing body, and "concurrent enrollment" means enrollment in joint or cooperative programs involving two or more institutions within a college or university system~~].

(b) The governing board may fix and collect a reasonable fee or fees for the provision of facilities and the enforcement and administration of parking and traffic regulations approved by the board for an institution; provided, however, that no such fee may be charged to a student unless the student desires to use the facilities [~~When a student registers at more than one public institution of higher education within a college or university system under concurrent enrollment provisions of joint or cooperative programs between said institutions, the student shall pay all mandatory student services fees to the institution designated as the "home institution" under the joint or cooperative program and the governing board may waive the payment of all mandatory student services fees at the other institution(s)~~]."

2. On page 7, delete subsections (e) and (f) and insert in lieu thereof the following:

(e) No portion of the compulsory fees collected may be expended [~~A fee~~] for parking services or facilities except as related to providing shuttle bus services [~~may not be charged to a student unless the student desires to use the parking facilities provided~~].

[~~(f) The board may charge reasonable fees for the enforcement and administration of university parking or traffic regulations approved by the board.~~]

3. Beginning on page 7, reletter subsections (g), (h), (i), (j), (k), (l), and (m) of Sec. 54.513 as subsections (f), (g), (h), (i), (j), (k), and (l), respectively.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1831 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1831** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 2622 ON SECOND READING

Senator Henderson asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2622, Relating to the authority of counties to regulate various matters; providing criminal penalties.

There was objection.

Senator Henderson then moved to suspend the regular order of business and take up **C.S.H.B. 2622** for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Sarpalius, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Green, Washington.

Absent: Glasgow, Lyon, Santiesteban.

The bill was read second time.

Senator Tejeda offered the following amendment to the bill:

Amend **C.S.H.B. 2622** as follows:

(1) In Section 1 of the bill, after the last period in the amended law, insert the following:
In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee. If a letter of credit is used, it must list as the sole beneficiary the county judge, or his successors in office, of the county in which the subdivision is located and must be conditioned that the owner or owners of the tract of land to be subdivided will construct any roads or streets within the subdivision in accordance with the specifications promulgated by, and within a reasonable time as may be allowed by, the commissioners court of the county.
(2) In Section 2 of the bill, after the last period in the amended law, insert the following:
In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee. If a letter of credit is used, it must list as the sole beneficiary the county judge, or his successors in office, of the county in which the subdivision is located and must be conditioned that the owner or owners of the tract of land to be subdivided will construct any roads or streets within the subdivision in accordance with the specifications promulgated by, and within a reasonable time as may be allowed by, the commissioners court of the county.

The amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2622 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2622** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Sarpalius, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Green, Washington.

Absent: Glasgow, Lyon, Santiesteban.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 2. (Same as previous roll call)

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1718

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1718** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS	WOLENS
KRIER	SCHOOLCRAFT
BROWN	BLAIR
BLAKE	S. JOHNSON
HENDERSON	LARRY
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

GUESTS PRESENTED

Senator Anderson was recognized and introduced the Capitol Physician for the Day, Dr. Max G. Latham of Sulphur Springs.

Dr. Latham, accompanied by his wife, Margie, was welcomed and received the appreciation of the Senate.

HOUSE BILL 1814 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1814, Relating to initiating an appeal of a property tax determination.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 1814** as follows:

(1) Strike lines 10 and 11 on Page 1, and substitute the following:

"had. An appeal initiated by a timely filed petition for review also constitutes sufficient and timely written notice of appeal under this chapter and such appeal is not barred by a failure to timely file the notice of appeal; however, the [;] failure to timely file a petition bars any appeal under this chapter [section]."

The amendment was read and was adopted viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Present-not voting" on the adoption of the amendment.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1814 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1814** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Present-not voting" on the final passage of the bill.

CONFERENCE COMMITTEE ON HOUSE BILL 373

Senator Farabee called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 373** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 373** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Farabee, Chairman; Armbrister, Caperton, Anderson and Tejeda.

HOUSE JOINT RESOLUTION 60 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 60, Proposing a constitutional amendment to raise the maximum property tax rate that may be adopted by certain rural fire prevention districts after an election.

The resolution was read second time and was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 60 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.J.R. 60** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 665 ON SECOND READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 665, Relating to the requirement that bid documents and contracts for construction projects in a municipality or in the municipality's extraterritorial jurisdiction include detailed trench construction plans.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 665 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 665** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Brooks in Chair)

MOTION TO PLACE HOUSE BILL 1937 ON SECOND READING

Senator Jones asked unanimous consent to suspend the regular order of business to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1937, Relating to authorizing a public utility to self-insure all or part of its potential losses from windstorm, fire, explosion, or any other class of catastrophic property loss; providing for creation of appropriate reserve accounts and consideration of those accounts for rate-making purposes.

There was objection.

Senator Jones then moved to suspend the regular order of business to take up **H.B. 1937** for consideration at this time.

The motion was lost by the following vote: Yeas 19, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Sarpalius, Sims, Zaffirini.

Nays: Barrientos, Caperton, Edwards, Johnson, Parker, Parmer, Tejeda, Truan, Uribe, Washington, Whitmire.

Absent: Santiesteban.

HOUSE BILL 812 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 812, Relating to suspension of certain licenses issued by the Texas Board of Private Investigators and Private Security Agencies.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Amend **H.B. 812** by adding the following new SECTION 2 and renumbering existing Sections 2 and 3 accordingly:

SECTION 1. The Private Investigators and Private Security Act, as amended (Article 4413 (29b), Vernon's Texas Civil Statutes), is amended by adding Section 3A to read as follows:

Section 3A. ISSUANCE, SUSPENSION AND REVOCATION OF CERTAIN SELLER'S LICENSES.(a) Except as provided under Subsection (c) of this section, the provisions of this Act do not apply to a person who sells burglar alarms or other devices for prevention or detecting burglary if:

(1) the person does not install, service, or maintain the burglar alarms or other devices;

(2) the person holds a valid seller's license issued by the board;

(3) the person has, as a precedent for obtaining a seller's license, submitted to the board an application for a seller's license, which application shall include the person's full name, residence telephone number, date and place of birth and social security number, together with two color photographs taken within the past six months that show a facial likeness of the person and two sets of classifiable fingerprints;

(4) the person has paid to the board a seller's license fee as established by the board, but not to exceed $40, which license shall be valid for a period of two years;

(5) there is filed with the board, either by the manufacturer, distributor, or sellers of such devices, a certificate (s) evidencing insurance for liability for bodily injury or property damage arising from faulty or defective products in an amount not less than $1 million combined single limit; provided, that such policy of insurance need not relate exclusively to burglary devices;

(6) there has been filed with the board, either by the manufacturer, distributor or sellers of such devices, a surety bond executed by a surety company authorized to do business in this state in the sum of Ten Thousand Dollars ($10,000) in favor of the State of Texas, and any customer purchasing such device(s) who does not receive delivery of the device(s) in accordance with his contract or agreement may bring an action against the bond to recover the down payment or purchase price actually paid; and

(7) the person is not employed by a security services contractor.

(b) the board shall approve an application for a seller's license and shall issue such license to an applicant unless the background check of the applicant discloses a felony conviction other than that for which a full pardon has been granted, or if any information provided in the application is false.

(c) It shall be unlawful and punishable as provided in Section 44 of this Act for any person who holds a current seller's license to install, service, monitor or respond to burglar alarms or other devices used to prevent or detect burglary.

(d) In addition to the criminal penalties provided under Section 44 of this Act, conviction for a violation of this section by a person subject to this section constitutes a ground for the suspension or revocation of the person's seller's

license, and following such conviction, the board may suspend or revoke the person's license after a hearing conducted in the manner provided by Section 11B of this Act.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 812 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 812** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 941

Senator Glasgow called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 941** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 941** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Jones, McFarland, Anderson and Parmer.

HOUSE CONCURRENT RESOLUTION 189 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

H.C.R. 189, Creating the Select Committee on Financing Capital Construction Projects.

The resolution was read second time and was adopted viva voce vote.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 1622 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1622, Relating to certain restrictions on the use of polygraph examinations by the Department of Public Safety.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1622 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1622** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 384 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 384** be placed on its third reading and final passage:

H.B. 384, Relating to the regulation of certain crane operators; providing penalties.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Green, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Glasgow, Jones, Leedom, Sims, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Sims, Glasgow and McFarland asked to be recorded as voting "Nay" on the final passage of the bill.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 4 ADOPTED

Senator Glasgow called from the President's table the Conference Committee Report on **H.B. 4**. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 26, 1987.)

On motion of Senator Glasgow, the Conference Committee Report was adopted viva voce vote.

HOUSE BILL 2158 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2158, Relating to granting limited law enforcement authority to certain employees of the Texas Department of Corrections.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **H.B. 2158** as follows:

(1) Strike all below the enacting clause and insert the following:

SECTION 1. Title 108, Revised Statutes, is amended by adding Article 6166g-5 to read as follows:

Art. 6166g-5. EMPLOYEES; LIMITED LAW ENFORCEMENT POWERS. (a) The director of the Texas Department of Corrections or his designee may authorize employees of the department to transport inmates and to apprehend escapees from the department. An employee acting under authority granted by the director has the same powers and duties as does a peace officer under the laws of this state, except that the employee may not act without receiving express orders from the director or his designee, and may exercise those powers and perform those duties throughout the state but only during duty hours.

(b) The department may allow employees who are granted law enforcement authority under this article to assist peace officers in any county of the state if the assistance is requested for the purpose of apprehending an escapee of a municipal or county jail and if the department determines that the assistance will not jeopardize the safety and security of the department and its personnel. An employee who assists a peace officer in the performance of his duties has the same powers and duties as does the officer requesting assistance.

(c) An employee of the department is expressly prohibited from enforcing the laws of this state relating to the prevention of misdemeanors and the detention of persons who commit misdemeanors, including laws regulating traffic and the use of state highways.

(d) Employees described by Subsection (a) of this article may not be considered peace officers for any purposes other than those specified under this article and are not required to be certified by the Texas Commission on Law Enforcement Officer Standards and Education.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2158 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2158** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 177 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 177, Relating to the inclusion of certain social workers' services in health insurance coverage.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 177 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 177** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1826 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1826, Relating to conditions of probation imposed on certain persons convicted of sexual offenses.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1826 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1826** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2108 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2108, Relating to the purchase, invoice, and payment of supplies, materials, equipment, and services by state agencies.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Amend **H.B. 2108** as follows:

(1) On page 1, between lines 4 and 5, insert new Sections 1-4 to read as follows and renumber current Sections 1 and 2 as Sections 5 and 6:

SECTION 1. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivision (3) to read as follows:

(3) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit at least 51 percent of all classes of the shares of stock or other equitable securities which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; or

(B) a sole proprietorship for the purpose of making a profit which is 100 percent owned, operated, and controlled by one or more persons described by Paragraph (A) of this subdivision; or

(C) a partnership for the purpose of making a profit wherein 51 percent of the assets and interest in the partnership must be owned by one or more persons described by Paragraph (A) of this subdivision. Minority or women partners must have a proportionate interest in the control, operation and management of the partnership affairs; or

(D) a joint venture between minority/women group members for the purpose of making a profit wherein the minority participation is based on the sharing of real economic interest and must include equally proportionate control over management, interest in capital, and interest earnings. If majority group members own or control debt securities, lease hold interest, management contracts or other interests, the joint venture shall not be designated a disadvantaged business; or

(E) a supplier contract between persons described in Paragraph (A) of this subdivision and a prime contractor wherein the disadvantaged business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouse and ship the supplies.

SECTION 2. Article 1, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Sections 1.03, 1.04, and 1.05 to read as follows:

Sec. 1.03. LIST; REPORT. (a) The small and minority business enterprise division of the Texas Economic Development Commission or its successor agency shall compile a list of the disadvantaged businesses and women-owned businesses in this state that are certified as provided by Section 1.04 of this Act. The division shall update the list at least semiannually.

(b) The division shall provide a copy of the list to the commission and to each state agency on a semiannual basis. The commission shall use the list in determining awards of purchasing contracts and public works contracts.

(c) In January and July of each year, each state agency shall report to the small and minority business enterprise division of the Texas Economic Development Commission or its successor agency the total number and dollar volume of contracts awarded to disadvantaged businesses during the preceding six months.

Sec. 1.04. CERTIFICATION. (a) The Texas Economic Development Commission or its successor agency shall develop a procedure for certifying businesses that are disadvantaged.

(b) The Texas Economic Development Commission or its successor agency shall develop a procedure for evaluating and approving or disapproving a program operated by a municipality in this state for certification of disadvantaged business. Certification as a disadvantaged business under an approved municipal program shall constitute certification by the Texas Economic Development Commission or its successor agency.

Sec. 1.05. PENALTY. (a) A person commits an offense if the person knowingly and intentionally applies as a disadvantaged business for an award of a purchasing contract or public works contract subject to this Act if the person is not a disadvantaged business under Section 1.02(3) of this Act.

(b) An offense under this section is a felony of the third degree.

SECTION 3. Section 3.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.07. EMERGENCY PURCHASES. (a) The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

(b) Each emergency purchase made under this section is subject to the disadvantaged business provisions of Section 3.10 of this article.

SECTION 4. Section 3.10, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.10. PURCHASE METHODS. (a) In purchasing supplies, materials, services, and equipment the commission may use, but is not limited to, the contract purchase procedure, the multiple award contract procedure, and the open market purchase procedure. The commission shall have the authority to combine orders in a system of schedule purchasing, and it shall at all times try to benefit from purchasing in bulk. All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

(b) The commission shall award to disadvantaged businesses at least 10 percent of the total value of all contract awards for the purchase of supplies, materials, equipment, or services that the commission expects to make for a state agency in its fiscal year. The commission shall estimate the expected total value of contract awards not later than the 60th day of its fiscal year and may revise the estimate as new information requires.

(c) Each state agency that purchases supplies, materials, equipment, or services otherwise than through the commission shall award to disadvantaged businesses at least 10 percent of the total value of all contract awards for the purchase of supplies, materials, equipment, or services that the state agency expects to make in its fiscal year. The state agency shall estimate the expected total value of contract awards not later than the 60th day of its fiscal year and may revise the estimate as new information requires.

(2) On page 3, strike lines 26-27 and substitute the following:

SECTION 7. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.34 to read as follows:

Sec. 5.34. PUBLIC WORKS CONTRACTS WITH CERTAIN BUSINESSES. A state agency that enters contracts for projects, including projects conducted by an agency otherwise excepted under Section 5.13 of this article, shall award to disadvantaged businesses at least 10 percent of the total value of all construction contract awards that the agency expects to make in its fiscal year. The agency shall estimate the expected total value of contract awards not later than the 60th day of its fiscal year and may revise the estimate as new information requires.

SECTION 8. This Act takes effect September 1, 1987, and applies to state purchasing contracts and public works contracts awarded on or after September 1, 1988.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

(3) On page 4, strike lines 1-5.

The committee amendment was read.

Senator Washington offered the following substitute amendment for the committee amendment:

Amend **H.B. 2108** by striking the committee amendment and substituting the following:

(1) Amend **H.B. 2108** by adding the following appropriately numbered sections:

SECTION ___. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (3), (4), and (5) to read as follows:

(3) "Disadvantaged bidder" or "disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, and American Indians;

(B) a sole proprietorship for the purpose of making a profit that is 100 percent owned, operated, and controlled by one or more persons described by Paragraph (A) of this subdivision;

(C) a partnership for the purpose of making a profit at least 51 percent of the assets and interest of which are owned by one or more persons described by Paragraph (A) of this subdivision so long as minority or women partners have a proportionate interest in the control, operation, and management of the partnership affairs; or

(D) a joint venture between minority or women group members for the purpose of making a profit in which the minority participation is based on the sharing of real economic interest and includes equally proportionate control over management, interest in capital, and interest earnings, but if majority group members own or control debt securities, lease hold interest, management contracts, or other interests, the joint venture is not a disadvantaged business.

(4) "Disadvantaged Texas product" means a product that is manufactured, refined, produced, mined, or grown by a disadvantaged business in this state. The term includes a product assembled by a disadvantaged business in this state from component parts if at least 51 percent of those parts are manufactured by a disadvantaged business in this state. The term also includes crushed and broken stone, sand and gravel, shell products, slag, other construction aggregates, cement and cement clinker, or asphalt offered by disadvantaged businesses operating in Texas without regard to where those products or materials are manufactured, produced, or mined.

(5) "Local government" means a municipality, county, school district or other special district, institution of higher education, junior college district, or any other political subdivision of the state.

SECTION ___. Article 1, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Sections 1.03, 1.04, 1.05, 1.06, and 1.07 to read as follows:

Sec. 1.03. LIST; REPORT. (a) The small and minority business enterprise division of the Texas Economic Development Commission or its successor agency shall compile a list of the disadvantaged businesses and women-owned businesses in this state that are certified as provided by Section 1.04 of this Act. The division shall update the list at least semiannually.

(b) The division shall provide a copy of the list to the commission and to each state agency on a semiannual basis. The commission shall use the list in determining awards of purchasing contracts and public works contracts.

(c) In January and July of each year, each state agency shall report to the small and minority business enterprise division of the Texas Economic Development Commission or its successor agency the total number and dollar volume of contracts awarded to disadvantaged businesses during the preceding six months.

Sec. 1.04. CERTIFICATION. (a) The Texas Economic Development Commission or its successor agency shall develop a procedure for certifying businesses that are disadvantaged.

(b) The Texas Economic Development Commission or its successor agency shall develop a procedure for evaluating and approving or disapproving a program operated by a municipality in this state for certification of disadvantaged business. Certification as a disadvantaged business under an approved municipal program

shall constitute certification by the Texas Economic Development Commission or its successor agency.

Sec. 1.05. PENALTY. (a) A person commits an offense if the person knowingly and intentionally applies as a disadvantaged business for an award of a purchasing contract or public works contract subject to this Act if the person is not a disadvantaged business under Section 1.02(3) of this Act.

(b) An offense under this section is a felony of the third degree.

Sec. 1.06. NOTICE AND ASSISTANCE. (a) A state agency intending to enter into a contract for goods or services, including construction contracts, shall provide notice of the contract to all disadvantaged businesses that are located in the state and that are of a type appropriate to carry out the contract, as determined from the list compiled under Section 1.03 of this Act.

(b) A local government intending to enter into a contract for goods or services, including construction contracts, shall provide notice of the contract to all disadvantaged businesses that are located in the local government's geographical area and that are of a type appropriate to carry out the contract, as determined from the list compiled under Section 1.03 of this Act.

(c) A notice under this section must include an invitation to bid on the contract and a notice of the availability of assistance under Section 1.07 of this Act.

Sec. 1.07. BIDDER ASSISTANCE. The commission shall adopt rules requiring each state agency and local government to provide assistance to disadvantaged businesses seeking to contract with the state agency or local government. The rules must provide guidelines for the type of assistance required.

SECTION ___. Section 3.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.07. EMERGENCY PURCHASES. (a) The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

(b) In making an emergency purchase under this section the state agency shall, if the cost to the state and the quality are equal, give preference to disadvantaged businesses.

SECTION ___. Section 3.28, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) If this section or Chapter 83, Acts of the 69th Legislature, Regular Session, 1985 (Article 601g, Vernon's Texas Civil Statutes), requires the giving of a preference to Texas products or products offered by Texas bidders, including agricultural products, among those products and bidders, if the cost to the state and the quality are equal, first preference shall be given to disadvantaged Texas products and products offered by Texas disadvantaged bidders, and second preference shall be given to other Texas products and products offered by other Texas bidders. If disadvantaged Texas products or products offered by a Texas disadvantaged bidder are not available, first preference shall be given as provided by this subsection to Texas products manufactured, refined, produced, mined, or grown by, and to products offered by Texas bidders who are, prime contractors at least 51 percent of whose subcontractors directly involved in the manufacture, warehousing, shipping, or distribution of supplies or materials are disadvantaged businesses.

SECTION ___. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.34 to read as follows:

Sec. 5.34. PUBLIC WORKS CONTRACTS WITH CERTAIN BUSINESSES. A state agency that enters a contract for a project, including a project conducted by an agency otherwise excepted under Section 5.13 of this article, shall, if the cost to the state and the quality are equal, give preference to disadvantaged businesses.

(2) Strike Section 3 of the bill and substitute the following appropriately numbered sections:

SECTION ___. This Act takes effect September 1, 1987, and applies only to contracts awarded on or after September 1, 1988.

SECTION ___. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

(3) Renumber remaining sections appropriately.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of the committee amendment as substituted, the committee amendment was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2108 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2108** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was pased by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 380, Relating to the time for filing an application for residence homestead exemptions from ad valorem taxation. (Amended)

S.B. 1083, Relating to collection of fees on dishonor of checks given in payment under certain loan agreements. (Amended)

S.B. 1521, Relating to the creation, administration, powers, duties, operation, and the authority to levy taxes, issue bonds, and exercise the power of eminent domain of the North Grand Prairie Flood Control District.

S.B. 1315, Relating to the creation, organization, administration, and financing of road districts. (Amended)

S.B. 933, Relating to the regulation of nepotism in government. (Amended)

S.B. 545, Relating to the use of certain tools by agricultural laborers in commercial farming operations.

S.B. 1081, Relating to registrations and reports filed with the secretary of state concerning communications to influence legislation or administrative actions. (Amended)

S.B. 560, Relating to costs incurred by governmental bodies to supply certain public records. (Amended)

S.B. 610, Relating to the transfer of certain trust responsibilities and trust lands of the Alabama-Coushatta and Tigua Indian tribes to the United States Department of the Interior based on the restoration of the federal trust relationship with those tribes.

S.B. 408, Relating to plat requirements and regulations applicable to certain subdivisions of land. (Substituted and amended)

S.B. 954, Relating to the operation and regulation of fraternal benefit societies.

S.B. 115, Relating to the organization, powers, and duties of the State Purchasing and General Services Commission. (Substituted and amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 1829, To Committee on Health and Human Services.

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Services might consider **H.B. 1829** upon recess today.

RECESS

On motion of Senator Brooks, the Senate at 12:02 p.m. took recess until 1:30 p.m. today.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by the President.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

H.B. 42	**H.B. 1739**	**H.B. 144**	**S.B. 1266**
H.B. 50	**H.B. 1963**	**H.B. 147**	**S.B. 1300**
H.B. 141	**H.B. 1964**	**H.B. 161**	**S.B. 1341**
H.B. 152	**H.B. 2002**	**H.B. 162**	**S.B. 1446**
H.B. 287	**H.B. 2011**	**H.B. 163**	**S.B. 1448**
H.B. 354	**H.B. 2060**	**H.B. 235**	**S.B. 1449**
H.B. 396	**H.B. 2109**	**H.B. 250**	**S.B. 1452**
H.B. 625	**H.B. 2250**	**H.B. 278**	**S.B. 1454**
H.B. 637	**H.B. 2417**	**H.B. 280**	**S.B. 1473**
H.B. 678	**H.B. 2511**	**H.B. 306**	**H.C.R. 176**
H.B. 682	**H.B. 2530**	**H.B. 309**	**H.C.R. 182**
H.B. 744	**H.B. 2537**	**S.B. 249**	**H.C.R. 183**
H.B. 829	**H.B. 2544**	**S.B. 498**	**H.C.R. 231**
H.B. 874	**H.B. 2551**	**S.B. 604**	**H.C.R. 235**

H.B. 875	H.B. 2558	S.B. 605	H.J.R. 35
H.B. 1052	H.B. 2565	S.B. 726	S.C.R. 49
H.B. 1180	H.B. 2566	S.B. 1027	S.C.R. 55
H.B. 1318	H.B. 2568	S.B. 1043	S.C.R. 65
H.B. 1325	H.B. 2579	S.B. 1055	S.C.R. 79
H.B. 1354	H.B. 2580	S.B. 1066	S.C.R. 114
H.B. 1368	H.B. 2581	S.B. 1077	S.C.R. 125
H.B. 1432	H.B. 2621	S.B. 1100	S.C.R. 126
H.B. 1440	H.B. 59	S.B. 1115	S.J.R. 53
H.B. 1647	H.B. 83	S.B. 1163	S.J.R. 56
H.B. 1714	S.B. 1125		

REPORT OF SPECIAL COMMITTEE

The following Report of Special Committee was read and was filed with the Secretary of the Senate.

REPORT OF THE COMMITTEE TO DESIGNATE THE STATE ARTIST

May 27, 1987
Austin, Texas

The Honorable William P. Hobby
President of the Senate

The Honorable Gibson D. (Gib) Lewis
Speaker of the House of Representatives

Sir:

Pursuant to **H.C.R. 3** passed by the 70th Legislature, Regular Session, the committee met and agreed upon the following:

To be Texas State Artist from June 1, 1987, and ending May 31, 1988, Neil Caldwell;

To be alternate State Artist from June 1, 1987, and ending May 31, 1988, Rey Gaytan.

Representative Dick Burnett	Senator Chet Brooks
Representative Patricia Hill	Senator Carl Parker
Representative Bruce Gibson	Senator Gonzalo Barrientos

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 1829

COMMITTEE SUBSTITUTE HOUSE BILL 1829
ORDERED NOT PRINTED

On motion of Senator Brooks and by unanimous consent, **C.S.H.B. 1829** was ordered not printed.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 146, Recalling **H.B. 1606** from the House of Representatives.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 1239 WITH HOUSE AMENDMENT

Senator Green called **S.B. 1239** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Toomey

Amend **S.B. 1239** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 32.101(a), Government Code, is amended to read as follows:

(a) The Commissioners Court of Harris County shall budget for and pay the judges of the district courts having jurisdiction in that county for judicial and administrative services an annual salary of not less than $12,000 nor more than $2,000 more than the highest salary paid by the county to a statutory county court judge [~~$25,000 for judicial and administrative services~~].

SECTION 2. Section 32.101, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding a provision of a general appropriations act, the comptroller may not reduce the state salary paid to a district judge because of the amount of salary received by the judge under this section.

SECTION 3. This Act takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Green moved to concur in the House amendment.

The motion prevailed viva voce vote.

RECORD OF VOTES

Senators Glasgow, Farabee, Caperton, Lyon, Jones, Armbrister, Edwards and Montford asked to be recorded as voting "Nay" on the motion to concur in the House amendment.

HOUSE BILL 1919 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1919, Relating to the creation of a Fire Ant Advisory Board and an award program for research in the field of fire ant control and eradication.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1919 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1919** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2235 ON SECOND READING

On motion of Senator Anderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2235, Relating to the creation of a job-start loan program to provide employment opportunities for certain displaced farmers and other persons.

The bill was read second time.

Senator Anderson offered the following amendment to the bill:

Amend **H.B. 2235** by striking everything below the enacting clause and inserting the following:

SECTION 1. DEFINITIONS. In this Act:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Department" means the Texas Department of Agriculture.

(3) "Program" means the agricultural job-start program created under this Act.

(4) "Board" means the state job-start advisory board.

SECTION 2. ADVISORY BOARD; PROGRAM. (a) The job-start advisory board is created. The board is to be composed of the commissioner of agriculture and six members. The governor shall appoint three public members to the board, with the advice and consent of the senate. Of the appointed members, one shall be a representative of the regional planning commissions created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965 (Article 1011m, Vernon's Texas Civil Statutes); one shall be a county judge, who is knowledgeable in agriculture; and one shall have experience in the agriculture business. In addition, the vice-chancellor for agriculture at Texas A&M University, the director of the Institute for International Agribusiness Studies at Prairie View A&M University, and the dean of the college of Agricultural Science at Texas Tech University shall serve as members of the board. Appointed advisory board members shall serve staggered terms of four years. The commissioner shall serve as chair of the board.

(b) The agricultural job-start program is created to provide self-employment opportunities for certain farmers and other persons who have been displaced from agricultural work because of adverse economic conditions and for other low-income persons who reside in rural areas of the state. The program is under direction of the board, and the board shall adopt rules and prescribe forms as necessary to administer the program.

(c) In administering the program, the board shall contract with regional planning commissions, other regional nonprofit organizations, Texas State Technical Institute, or community colleges to organize a job-start program in at least four regional planning commission regions of the state. The board shall select contracting organizations based on competitive applications submitted to the board. The board shall adopt rules relating to the application process. The board shall give priority to applications from regions of the state with high rates of rural

unemployment or farm bankruptcies. Each regional program shall be under the direction of a coordinator who serves as the executive director for the program in that region.

(d) The board shall appoint a regional advisory board to review loan applications and advise the coordinator regarding the operation of the program. A regional advisory board is composed of five members serving two-year terms. Each regional board must include representatives of agriculture groups and low income groups, and demonstrated experience in business and financial matters.

(e) The department shall provide all staff support and technical assistance for the program.

SECTION 3. LOAN PROGRAM. (a) Each regional job-start program shall administer a low interest loan program under the terms of its contract with the board.

(b) On application, the program may make a loan to a low-income individual to assist the individual in establishing or expanding an agriculturally-related small business venture located in the region. The regional advisory board shall recommend the amount of the loan. A loan to any one individual may not exceed $20,000. A majority vote of the regional advisory board is required to approve a loan application. The regional advisory board shall transmit an approved application to the state advisory board for further review and final approval by the board in accordance with rules adopted by the board.

SECTION 4. DONATIONS; FUND. (a) The board may accept gifts, grants, or other donations from any public or private source. All funds received under this subsection shall be deposited in the state treasury to the credit of the job-start revolving loan fund.

(b) The job-start revolving loan fund is established in the state treasury. The fund is composed of:

(1)(a) distribution of the proceeds from the issuance of general obligation bonds authorized by **H.J.R. 4**, Acts of the 70th Legislature, Regular Session, 1987, not to exceed $250,000 annually, or

(b) amounts appropriated by the legislature for the operation of the program, not to exceed $250,000 annually;

(2) repayments of the principal of and interest on loans made under this Act; and

(3) funds received by the board from any other public or private entity for use in the program.

SECTION 5. CONTINGENT PROVISION. The provisions of this Act authorizing the use of the proceeds from the issuance of general obligation bonds are contingent upon adoption of the constitutional amendment proposed by **H.J.R. 4**, Acts of the 70th Legislature, Regular Session, 1987. If that amendment is not approved by the voters, this provision shall have no effect.

SECTION 6. INITIAL APPOINTMENTS. Initial appointments to the board shall be made by February 1, 1988. The governor shall designate one appointment to expire February 1, 1990, one appointment to expire February 1, 1991, and one appointment to expire February 1, 1992.

SECTION 7. REPORTS. (a) Each regional job-start program periodically shall report to the board in the manner prescribed by the board.

(b) At the end of each state fiscal year, the commissioner shall report to the comptroller of public accounts regarding the conduct of the program. The report must include a statement of the balance in the loan fund and a description of the status of all outstanding loans.

SECTION 8. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 9. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Anderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2235 ON THIRD READING

Senator Anderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2235** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 888 ON SECOND READING

Senator Parker moved to suspend the regular order of business to take up for consideration at this time:

H.B. 888, Relating to the continuation, powers, and duties of the Texas Board of Private Investigators and Private Security Agencies.

POINT OF ORDER

Senator Green raised a Point of Order against further consideration of the bill, stating the bill was heard in violation of Senate Rule 105.1, the tag rule.

The President overruled the Point of Order, stating that Senator Green had attended the meeting of the committee hearing the bill and participated in voting on the bill; and that the Point of Order was not timely raised.

The motion to suspend the regular order prevailed by the following vote: Yeas 22, Nays 1.

Nays: Green.

Absent: Harris, Johnson, Krier, Leedom, Santiesteban, Uribe, Washington, Whitmire.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 888**, SECTION 2, Subsection 3, to read as follows:

(3) a person who has ~~(full-time)~~ employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, ~~(1965,)~~ who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

(A) employed in an employee-employer relationship; or

(B) employed on an individual contract basis;

(C) not in the employ of another peace officer of a political subdivision in a county having a population of less than 2,000,000; and

(D) not a reserve peace officer in a political subdivision of a county having a population of less than 2,000,000;

Further amend **H.B. 888**, SECTION 2, by adding an appropriately numbered Subsection under EXCEPTIONS:

( ) a person who serves as a reserve law enforcement officer in the employ of a sheriff or constable in a county having a population of 2,000,000 or more according to the most recent federal census.

The amendment was read.

Question - Shall Floor Amendment No. 1 be adopted?

(Senator Glasgow in Chair)

PERMISSION GRANTED TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

On motion of Senator Blake and by unanimous consent, Senate Rule 14.1(d) was suspended in order that a Local and Uncontested Bills Calendar session might be held at the conclusion of today's session.

HOUSE BILL 888 ON SECOND READING

The Senate resumed consideration of **H.B. 888** on its second reading and passage to third reading with Floor Amendment No. 1 pending.

Question - Shall Floor Amendment No. 1 be adopted?

On motion of Senator Parker, Floor Amendment No. 1 was tabled by the following vote: Yeas 20, Nays 6, Present-not voting 1.

Yeas: Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Johnson, Krier, Leedom, Lyon, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Uribe, Washington, Zaffirini.

Nays: Barrientos, Caperton, Green, Henderson, Montford, Whitmire.

Present-not voting: Armbrister.

Absent: Anderson, Harris, Jones, McFarland.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 888**, page 5, line 2, by beginning the sentence with the words "Conviction for" so that the beginning phrase reads as follows:

"Conviction for a violation..."

The amendment was read and was adopted viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 888** Section 21, Section 39, subsections (b) and (c) by striking the language and substituting the following:
Subsection (b) The board shall conduct a background check for an applicant for a security officer commission with the Texas Department of Public Safety. The applicant must receive the approval of the board based on the results of the Texas Department of Public Safety check before beginning employment as a commissioned security officer.
Subsection (c) The board shall conduct a background check for each application for any other position regulated under this Act with the Texas Department of Public Safety. To continue employment in a capacity regulated under this Act, the

applicant must receive the approval of the board based on the results of that check not later than the 120th day after the date on which the applicant begins employment in that capacity.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 888 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 888** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Green, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 1517 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 1517** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - C. Evans

Amend **S.B. 1517** on page 1, between lines 21 and 22, by inserting new Sections 4 and 5 to read as follows and by renumbering current Section 4 as Section 6:

SECTION 4. Section 24.188, Government Code, is amended to read as follows:

Sec. 24.188. 86TH JUDICIAL DISTRICT (KAUFMAN COUNTY [~~AND ROCKWALL COUNTIES~~]). (a) The 86th Judicial District is composed of Kaufman County [~~and Rockwall counties~~].

(b) The terms of the 86th District Court begin[:

[~~(1) in Kaufman County~~] on the first Mondays in February and July[~~; and~~

[~~(2) in Rockwall County on the first Mondays in April and October~~].

SECTION 5. Section 24.500, Government Code, is amended to read as follows:

Sec. 24.500. 354TH JUDICIAL DISTRICT (HUNT, [~~AND~~] RAINS, AND ROCKWALL COUNTIES). (a) The 354th Judicial District is composed of Hunt, [~~and~~] Rains, and Rockwall counties.

(b) Section 24.108, relating to the 8th District Court, contains provisions applicable to both that court and the 354th District Court.

The amendment was read.

Senator Caperton moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1517** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Farabee, Lyon, McFarland and Montford.

(President in Chair)

HOUSE BILL 1459 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business, printing rule and Intent Calendar rule were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1459, Relating to the regulation of water and sewer utilities; providing administrative and civil penalties.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1459** Section 7, by striking Section 13.043 (b)(3) and renumbering the remaining subsection.

The committee amendment was read and was adopted viva voce vote.

Senator Montford offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 1459** by striking Section 28 and renumber the remaining Sections accordingly.

The committee amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1459** as follows:

(1) Strike Section 27 of the bill and substitute the following:

SECTION 27. Chapter 13, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. CENTRAL SYSTEM UTILITIES

Sec. 13.511. DEFINITIONS. In this subchapter:

(1) "Apartment house" means one or more buildings containing five or more dwelling units that are rented primarily for nontransient use, with rental paid at intervals of one week or longer.

(2) "Customer" means the individual, firm, or corporation in whose name a master meter has been connected by the utility.

(3) "Dwelling unit" means a room suitable for occupancy as a residence containing kitchen and bathroom facilities.

(4) "Nonsubmetered master metered utility service" means water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

(5) "Owner" means the legal titleholder of an apartment house and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house.

(6) "Tenant" means a person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(7) "Utility" means a public, private, or member-owned utility furnishing water or wastewater service to an apartment house served by a master meter.

Sec. 13.512. RULES. Notwithstanding any other law, the commission shall adopt rules and standards governing billing systems or methods used by apartment house owners for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the apartment house;

(2) the rental agreement contain a statement of the average apartment unit monthly bill for all apartment units for any allocation of those utilities for the previous calendar year;

(3) an apartment house owner may not impose additional charges on a tenant in excess of the actual charges imposed on the owner for utility consumption by the apartment house;

(4) the apartment house owner shall maintain adequate records regarding the utility consumption of the apartment house, the charges assessed by the utility, and the allocation of the utility costs to the tenants; and

(5) the apartment house owner shall maintain all necessary records concerning utility allocations, including the utility's bills, and shall make the records available for inspection by the tenants during normal business hours.

Sec. 13.513. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K of this chapter, if a landlord violates a rule of the commission regarding allocating nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs. However, the landlord is not liable for a civil penalty if the landlord proves the violation was a good faith, unintentional mistake.

(2) Add the following appropriately numbered sections:

SECTION ____. Section 2(c), Chapter 353, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) An apartment house owner and a mobile home park owner may provide for submetering of each dwelling unit for the measurement of the quantity of electricity [~~or water~~], if any, consumed by the occupants within that dwelling unit.

SECTION ____. Section 3, Chapter 353, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under

which any owner, operator, or manager of an apartment house or mobile home park which is not individually metered for electricity [~~and water~~] for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical [~~or water~~] consumption[~~, including wastewater charges based on water consumption~~]. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner or mobile home park owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour [~~or gallon~~] which is charged by the utility to the owner, and (b) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All electric [~~and water~~] submetering equipment shall be subject to the same rules, regulations, and standards established by the Public Utility Commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

SECTION ____. Section 1(5), Article 1446f, Revised Statutes, is amended to read as follows:

(5) "Nonsubmetered master metered utility service" means electric [~~and water~~] utility service that is master metered for the apartment house but not submetered[~~, and wastewater utility service based on master metered water utility service~~].

SECTION ____. Article 1446g, Revised Statutes, is amended to read as follows:

Art. 1446g. PENALTIES; SUBMETERING OR ALLOCATION OF CENTRAL SYSTEM COSTS. If a landlord violates any Public Utility Commission of Texas rule regarding (1) submetering of electric utilities consumed exclusively within the tenant's dwelling unit, or (2) allocating central system utility costs or nonsubmetered master metered electric utility costs, the tenant may recover treble the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs. However, the landlord shall not be liable for a civil penalty when the violation was a good faith, unintentional mistake. The landlord shall have the burden of proving the violation was a good faith, unintentional mistake.

The amendment was read and was adopted viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1459** by adding new Sections 30 and 31 as follows:

SECTION 30. Subchapter E, Chapter 11, Water Code, is amended to read as follows:

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct

interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means a right issued by the commission to use water.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for five [~~ten~~] years nonuse as provided by this subchapter.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as provided by Subsections [~~Subsection~~] (b) and (c) of this section, if [~~no~~] part or all of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the five-year [~~ten-year~~] period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned to the extent of nonuse during the five-year period, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part as provided by this subchapter.

(b) A permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985).

(c) Permits and certificates of adjudication that include conditions for the commencement and completion of construction are exempt from the requirement of Subsection (a) of this section until not later than the fifth year after construction as authorized by the permit or the certificate of adjudication is complete. This subsection does not exempt a permit from cancellation under Section 11.146 of this code.

Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as provided by Subsections (b) and (c), Section 11.173, of this code, if [~~When~~] the commission finds that its records do not show that all of the [~~any~~] water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past five [~~ten~~] years, the executive director may [~~shall~~] initiate proceedings, including a [~~terminated by~~] public hearing, to cancel the permit, certified filing, or certificate of adjudication in whole or in part to the extent of the five years nonuse.

Sec. 11.175. NOTICE. (a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for total or partial cancellation. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. [~~The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 11.303 of this code in the same watershed.~~]

(b) The commission shall also have the notice of the hearing published at least one time [~~once a week for two consecutive weeks,~~] at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

Sec. 11.176. HEARING. The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, certified filing, or certificate of adjudication during the five-year [~~10-year~~] period.

Sec. 11.177. [~~COMMISSION FINDING; ACTION. At the conclusion of the hearing if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, certified filing, or certificate of adjudication.~~

[~~Sec. 11.178. CANCELLATION IN PART. (a) Except as provided by Subsection (b) of this section, if some part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to partial cancellation, as provided by this subchapter, to the extent of the 10 years nonuse.~~

[~~(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985).~~

[~~Sec. 11.179. COMMISSION MAY INITIATE PROCEEDINGS. When the commission finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.~~

[~~Sec. 11.180. NOTICE. The commission shall give notice of the hearing as provided by Section 11.175 of this code.~~

[~~Sec. 11.181. HEARING. The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.~~

[~~Sec. 11.182.~~] COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the five-year [~~10-year~~] period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

Sec. 11.178 [~~11.183~~]. RESERVOIR. If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the

commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

Sec. 11.179 [~~11.184~~]. MUNICIPAL OR INDUSTRIAL PERMIT OR CERTIFICATE OF ADJUDICATION AND CERTIFIED FILING. Regardless of other provisions of this subchapter, all permits, certified filings, and certificates of adjudication [~~no portion of a certified filing held by a city, town, village, or municipal water district,~~] authorizing the storage and use of water for municipal or industrial purposes are exempt from cancellation to the extent that the water supply has been developed and can be expected to be beneficially used within a reasonable time when projections based on accepted methods are employed[~~, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings~~].

Sec. 11.180 [~~11.185~~]. EFFECT OF INACTION. Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

Sec. 11.181 [~~11.186~~]. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT. Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

[Sections 11.182 [~~11.187~~] to 11.200 reserved for expansion]

SECTION 31. Chapter 11, Water Code, is amended by adding Section 11.0821 to read as follows:

Sec. 11.0821. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter or a rule or order adopted or a permit or certificate of adjudication issued under this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) A person who fails to file an annual report, as required by Section 11.031 of this code, is subject to a civil penalty of $50 plus $25 a month for each succeeding full month the report is delinquent after March 1. The maximum penalty under this subsection is $200.

(c) A person who violates a provision of this chapter other than Section 11.031 of this code, or who violates a rule, order, or provision of a certified filing, permit, or certificate of adjudication is subject to a civil penalty in an amount not to exceed $5,000 a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(d) In determining the amount of the civil penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the potential impact of the violation on the stream and on the health, welfare, and safety of the general public, as well as of persons with a right to use water from the stream;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability including whether the violation could have been reasonably avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice may require.

(e) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (d) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(f) Not later than the 10th day after the date on which the preliminary report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice must include a brief summary of the charges, a statement of the amount of the civil penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended civil penalty, or may make a written request for a hearing.

(h) If the person charged with the violation consents to the civil penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(i) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (d) of this section.

(j) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (h) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(k) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the civil penalty:

(1) shall pay the amount of the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) shall forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, shall post with the commission a supersedeas bond in a form approved by the

commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(l) If the person charged with the penalty fails to forward the amount of the civil penalty to or to post the bond with the commission within the period provided by Subsection (k) of this section:

(1) the person has waived all legal rights to judicial review; and

(2) the commission or the executive director may forward the matter to the attorney general for enforcement.

(m) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(o) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(p) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

The amendment was read.

Senator Brown offered the following amendment to Floor Amendment No. 2:

Floor Amendment No. 3

Amend Floor Amendment No. 2 to **H.B. 1459** on page 6, line 27, by striking the words "has been developed and".

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 2 as amended, the amendment was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1459 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1459** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1439, Relating to provision of alternative treatment benefits for mental or emotional illness and disorders under certain group insurance policies. (Amended)

S.B. 296, Relating to sunset review of the Texas Conservation Foundation. (Amended)

S.B. 1371, Relating to minimum standards for long-term care coverage under certain accident and sickness insurance coverage and coverage of health maintenance organizations. (Amended)

S.B. 1355, Relating to a fee schedule for medical treatment under the workers' compensation law. (Amended)

S.B. 962, Relating to annexation authority of municipalities. (Amended)

S.B. 1170, Relating to the determination and reporting of surplus, assets, and liabilities for purposes of the franchise tax. (Amended)

S.B. 994, Relating to teacher education.

S.B. 1049, Relating to notice of insurance coverage before acceptance of collision damage waivers under car rental and lease agreements; providing a penalty.

S.B. 1279, Relating to the ability of the state, any political subdivision, or governmental agency to take the safety record of the bidder into consideration when evaluating the acceptance of a bid. (Amended)

S.B. 865, Relating to the obligation of territory de-annexed or excluded from a rural fire prevention district to pay its pro rata share of the district's debt. (Amended)

S.B. 1497, Relating to the regulation of veterinarians; providing criminal and civil penalties. (Amended)

S.B. 696, Relating to due process and probationary periods for public school employees. (Amended)

S.B. 1365, Relating to the study and selection of disposal sites by the Texas Low-Level Radioactive Waste Disposal Authority. (Substituted and amended)

S.B. 762, Relating to the right of the state to appeal in certain criminal cases.

S.B. 1132, Relating to the regulation of health maintenance organizations and their agents.

S.B. 1054, Relating to accounting for and reporting certain reinsurance agreements.

S.B. 989, Relating to the creation of the Surplus Lines Stamping Office of Texas.

S.B. 1532, Relating to the uses of local hotel occupancy tax revenue.

S.B. 1514, Relating to the rate of certain county hotel occupancy taxes and to the uses of hotel tax revenue in certain counties. (Amended)

S.B. 515, Relating to the dismissal of certain misdemeanor charges involving traffic offenses on completion of a driving safety course. (Amended)

S.C.R. 122, Directing the House and Senate to undertake a joint study of Texas Law and procedure relating to security for judgments in order to clarify the law. (Amended)

S.B. 512, Relating to eligibility for late absentee voting by a disabled voter.

S.B. 893, Relating to the agreement of spouses regarding the right of survivorship in certain community property. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 494 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 494, Relating to the statute of limitations for the offense of sexual assault.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 494** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01 FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation: murder and manslaughter;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) sexual assault under section 22.011(a)(2) of the Penal Code; indecency with a child;

(3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

(C) sexual assault except as provided in section 2(D) of Art. 12.01; ~~indecency with a child.~~

(4) three years from the date of the commission of the offense: all other felonies.

SECTION 2. Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense became barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as though this Act had not taken effect.

SECTION 3. This Act takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 494 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 494** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 530 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 530, Relating to the purchase of office supplies by counties.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 530 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 530** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1829 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business, printing rule and Intent Calendar rule were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1829, Relating to the prevention and control of communicable diseases; providing penalties.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1829 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1829** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE JOINT RESOLUTION 83 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 83, Proposing a constitutional amendment to permit a county to perform work, without compensation, for another governmental entity.

The resolution was read second time.

Senator Sims offered the following committee amendment to the resolution:

Amend **H.J.R. 83** as follows:

(1) Between lines 18 and 19 insert the following:

(B) determines, and by written finding states, the reasonable costs to the county of performing the service;

(2) Renumber the following sections accordingly.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 83 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.J.R. 83** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1189, Relating to boll weevil control; providing civil and criminal penalties. (Amended)

S.B. 152, Relating to the disposition of stolen property when a criminal action is not pending.

S.B. 784, Relating to changing the name of North Texas State University to University of North Texas.

S.B. 785, Relating to the validation of certain annexations and other related governmental acts and proceedings of home-rule municipalities.

S.C.R. 137, In Memory of Wilbur Cohen.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 612 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 612, Relating to elections; providing criminal penalties.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 612** as follows:

(1) Strike Sections 22, 49, 60, 61, 62, 63, 64, and 65 of the bill and renumber the subsequent sections accordingly.

(2) On page 1, strike lines 46—48 and substitute the following:

"[~~(8)~~] a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001(a)(4);".

(3) On page 1, line 49, before "[~~(9)~~]" insert "(8)".

(4) On page 1, line 52, strike "(8)" and substitute "(9)".

(5) On page 1, line 56, strike "(9)" and substitute "(10)".

(6) On page 6, line 16, after the period, insert "However, if the application is not timely for the main election, the timeliness of the application for the runoff election is determined in relation to that election.".

(7) On page 6, line 52, strike "Section [~~Sections 84.008 and~~]" and substitute "Sections 84.008 and".

(8) On page 6, strike lines 58-60.

(9) On page 6, line 61, strike "absentee voting by personal appearance;".

(10) On page 6, line 62, strike "(3)" and substitute "(2)".

(11) On page 8, line 8, between "time" and "at", insert "on the last day".

(12) On page 8, strike the sentence beginning on line 39 and ending on line 42.

(13) On page 8, line 46, after the period, insert "A poll watcher is entitled to accompany the clerk and observe the procedures under this subsection. The secretary of state may prescribe any other procedures necessary to implement this subsection including requirements for posting notice of any deliveries.".

(14) On page 8, line 56, after the period, insert "A poll watcher is entitled to accompany the clerk and observe the procedures under this subsection. The

secretary of state may prescribe any other procedures necessary to implement this subsection including requirements for posting notice of any deliveries.".

(15) On page 10, line 18, strike "and by adding Subsection (e)".

(16) On page 10, strike lines 39—44.

The amendment was read and was adopted viva voce vote.

Senator Krier offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 612** as follows:

(1) On page 10, between lines 44 and 45, by inserting a new Section 36 to read as follows and by renumbering the remaining sections accordingly:

SECTION 36. Section 173.0851(a), Election Code, as added by **S.B. 280**, 70th Legislature, Regular Session, 1987, to be effective September 1, 1987, is amended to read as follows:

(a) Any surplus remaining in a primary fund shall be remitted to the secretary of state immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election [~~If after the final installment, if any, is paid under Section 173.083(d), the total amount required to be deposited in a primary fund exceeds the primary election expenses actually incurred, the county chairman for a county primary fund or the state chairman for a state primary fund shall immediately remit the surplus in the applicable fund to the secretary of state~~]. The surplus in a primary fund shall be remitted regardless of whether state funds were requested by the chairman.

(2) On page 15, between lines 56 and 57, by inserting a new Section 66 to read as follows and by renumbering the remaining sections accordingly:

SECTION 66. Chapter 276, Election Code, is amended by adding Section 276.006 to read as follows:

Sec. 276.006. CHANGING ELECTORAL BOUNDARIES OF CERTAIN POLITICAL SUBDIVISIONS. A change in a boundary of a territorial unit of a political subdivision other than a county from which an office of the political subdivision is elected is not effective for an election unless the date of the order or other action adopting the boundary change is more than five months before election day.

The amendment was read and was adopted viva voce vote.

Senator Sarpalius offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 612** by adding a new Section 66, to read as follows, after Section 65 and renumbering all successive sections accordingly:

SECTION 66. Amend Subsection (3), Section 36.10, Penal Code, as amended, to read as follows:

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(A) not more than one honorarium is received from the same person in a calendar year; and

(B) not more than one honorarium is received for the same service; and

(C) [~~the value of the honorarium does not exceed $250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the recipient in performance of the services;~~

~~(D)~~] the honorarium, and expenses regardless of amount, are reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act;

The amendment was read and was adopted viva voce vote.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 612** as follows:

(1) Add a new Section 36 to read as follows:

SECTION 36. Sections 102.001 and 102.002, Election Code, are amended to read as follows:

Sec. 102.001. ELIGIBILITY. (a) A qualified voter is eligible to vote a late absentee ballot as provided by this chapter if the voter has a sickness or physical condition described by Section 82.002 and it is determined by a licensed physician or chiropractor or accredited Christian Science practitioner [~~that originates~~] on or after the day before the last day for submitting an application for a ballot to be voted by mail that the sickness or physical condition will prevent the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring his or her health.

(b) In this chapter, "late absentee ballot" means a ballot voted under this chapter.

Sec. 102.002. CONTENTS OF APPLICATION. An application for a late absentee ballot must comply with the applicable provisions of Section 84.002 and must include or be accompanied by a certificate of a licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I know that _ has a sickness or physical condition that will prevent him or her from appearing at the polling place for an election to be held on the _ day of _ ,19_, without a likelihood of needing personal assistance or of injuring his or her health and that the sickness or physical condition was determined to be such as to preclude his or her personal appearance at the polling place [~~originated~~] on or after _____.

"Witness my hand at _____, Texas, this _____ day of _____ ,19_____.

(signature of physician, chiropractor,
or practitioner)"

(2) Renumber the remaining Sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 612 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 612** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE REPORT HOUSE BILL 367

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 367** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN	WRIGHT
ANDERSON	PATRONELLA
TEJEDA	RILEY
WASHINGTON	SHINE
WHITMIRE	A. SMITH
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE HOUSE BILL 1191 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1191, Relating to the sale or distribution of driver's licenses or personal identification certificates; providing criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1191 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1191** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE CONCURRENT RESOLUTION 147

Senator Brooks offered the following resolution:

S.C.R. 147, Requesting the House to return **H.B. 2108** for further consideration.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

HOUSE JOINT RESOLUTION 104 ON SECOND READING

Senator Santiesteban asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.J.R. 104, Proposing a constitutional amendment relating to the establishment of a self-insurance pool for grain storage facilities and permitting the use of public funds as surety.

There was objection.

Senator Santiesteban then moved to suspend the regular order of business and take up **H.J.R. 104** for consideration at this time.

The motion prevailed by the following vote: Yeas 20, Nays 7.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Green, Johnson, Lyon, McFarland, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Glasgow, Harris, Jones, Krier, Leedom, Sarpalius.

Absent: Henderson, Montford, Parker, Parmer.

The resolution was read second time and was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

HOUSE JOINT RESOLUTION 104 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.J.R. 104** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Johnson, Lyon, McFarland, Montford, Parker, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Henderson, Jones, Krier, Leedom, Sarpalius, Washington.

Absent: Parmer.

The resolution was read third time and was passed by the following vote: Yeas 22, Nays 8.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Green, Johnson, Lyon, McFarland, Montford, Parker, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Glasgow, Harris, Henderson, Jones, Krier, Leedom, Sarpalius.

Absent: Parmer.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 873, Relating to the liquidation, rehabilitation, reorganization, and conservation of insurers. (Amended)

S.B. 551, Relating to church benefit plans and church benefits boards.

S.B. 1486, Relating to the creation, administration, powers, duties, operation, and financing of the Denton County Hospital District including the power to levy taxes, issue bonds, and take property by eminent domain.

S.J.R. 55, Proposing a constitutional amendment providing for the issuance of general obligation bonds to finance certain local public facilities. (Amended)

S.B. 437, Relating to the authority of the Texas Housing Agency to issue bonds in book-entry form.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 1407 WITH HOUSE AMENDMENTS

Senator McFarland called **S.B. 1407** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Hightower

Amend **S.B. 1407** by adding Subsection (d) to Section 2 as follows:

(d) Before the authority may issue and sell bonds, the legislature by law must have authorized in this Act, the General Appropriations Act, or the Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes), the specific projects.

Floor Amendment No. 2 - Ceverha

Amend **S.B. 1407** by adding a new Section 8 as follows and by renumbering Sections 8 and 9:

SECTION 8. Sections 4 and 5, Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. COMPOSITION OF GOVERNING BOARD. The authority is governed by a board of directors composed of [~~three~~] six members appointed by the governor with the advice and consent of the senate. It is the intent of the Legislature

that the members of the board be selected on the basis of their expertise in matters relevant to the purposes and responsibilities of the Authority. To the extent possible, members of the board shall represent all geographical areas of the state.

Sec. 5. TERMS. Members of the board are appointed for staggered terms of six years with [~~one member's term~~] two members' terms expiring on February 1 of each odd-numbered year.

Floor Amendment No. 3 - Roberts

Amend **S.B. 1407**, as amended on second reading, by striking all below the enacting clause and substituting the following:

SECTION 1. DEFINITIONS. In this Act:

(1) "Authority" means the Texas Public Building Authority.

(2) "Board" means the board of directors of the authority.

(3) "Review board" means the bond review board.

SECTION 2. REVIEW BOARD. (a) The bond review board is composed of:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the state treasurer; and

(5) the comptroller of public accounts.

(b) The governor is chairman of the review board.

(c) If the speaker of the house of representatives is not permitted by the constitution of this state to serve as a voting member of the board, the speaker serves as a nonvoting member of the board.

(d) Bonds may not be issued under this Act, and proceeds of bonds issued under this Act may not be used to finance a project, unless the issuance or project, as applicable, has been reviewed and approved by the review board.

(e) The review board may adopt rules governing application for review, the review process, and reporting requirements.

(f) A member of the review board may not be held liable for damages resulting from the performance of the member's functions under this Act.

SECTION 3. TEXAS DEPARTMENT OF CORRECTIONS MASTER PLAN. Proceeds of bonds issued under this Act may not be distributed to the Texas Department of Corrections or otherwise used to finance a project of that department unless the department has submitted to the review board a master plan for construction of corrections facilities. The plan must be in the form, contain the information, and cover the period prescribed by the review board.

SECTION 4. GENERAL OBLIGATION BONDS. (a) The authority may issue up to $500 million in general obligation bonds and distribute bond proceeds to appropriate agencies for use for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities, corrections institutions, including youth corrections institutions, and mental health and mental retardation institutions. The proceeds may be used to refinance an existing obligation for a purpose described by this subsection. The authority may issue general obligation bonds to refund revenue bonds issued under this Act.

(b) The bonds may be issued at a rate of interest, according to the terms, and in a form determined by the authority.

(c) The authority by rule shall establish guidelines, criteria, and procedures for distributions of bond proceeds.

SECTION 5. REVENUE BONDS. (a) The authority may issue revenue bonds and distribute bond proceeds to appropriate agencies for use for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities, corrections institutions, including youth corrections institutions, and

mental health and mental retardation institutions. The proceeds may be used to refinance an existing obligation for a purpose described by this subsection.

(b) On issuance of the bonds under this section, the board shall certify to the appropriate agency and to the comptroller of public accounts that the funds are available and shall deposit the bond proceeds in the state treasury to the account of the appropriate agency.

(c) Once the funds are deposited and the comptroller of public accounts has certified that the funds are available, and after transfer of any reserve funds or capitalized interest certified to be reasonably required by the authority and payment of the costs of issuance of the bonds based on a statement by the authority that specifies those costs, the appropriate agency may begin approved projects.

(d) With the concurrence of the board, the state treasurer shall invest the unexpended bond proceeds and the investment income of those unexpended proceeds in investments approved by law for the investment of state funds. Any investment income required for project costs, and not required to be rebated to the federal government or used for debt service, as determined by the board, shall be credited to the appropriate agency. Investment income not required for project costs, and not required to be rebated to the federal government or used for debt service, shall be allocated as provided by Section 3.042, Treasury Act (Article 4393-1, Vernon's Texas Civil Statutes).

(e) The board may provide for the repayment of the principal of and interest on the bonds issued under this section from any source of funds lawfully available to the board. Bonds may not be scheduled to mature during the state fiscal year ending August 31, 1988, or August 31, 1989, and interest on the bonds for that period shall be capitalized and paid from bond proceeds.

(f) From funds appropriated for the purpose, the appropriate agency shall pay to the board pursuant to a lease agreement an amount determined by the board to be sufficient to:

(1) pay the principal of and interest on the bonds;

(2) maintain any reserve fund necessary to service the debt; and

(3) reimburse the authority for other costs and expenses relating to a project or outstanding bonds.

(g) Bonds issued under this section are subject to Sections 13, 14, 15, and 16, Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes).

(h) A state agency may enter lease agreements in the name of and on behalf of this state and may spend funds appropriated by the legislature for the purpose of making lease payments under this Act. Each state agency shall include in its biennial appropriation request an amount sufficient to pay the principal of and interest on outstanding bonds issued for that agency.

(i) Property financed by the authority under this section shall not become part of other property to which it may be attached or affixed or into which it may be incorporated, regardless of whether the other property is real or personal. The rights of a state agency in property financed by the authority under this section are those of a lessee, and no person claiming under or through such an agency shall acquire any greater rights with respect to that property.

SECTION 6. AMOUNT OF OUTSTANDING BONDS. At any one time, the combined amount of outstanding revenue bonds and outstanding general obligation bonds issued under this Act may not exceed $500 million.

SECTION 7. AUTHORIZED INVESTMENTS; SECURITY FOR PUBLIC FUNDS. (a) Bonds issued under this Act are a legal and authorized investment for a bank, trust company, savings and loan association, insurance company, fiduciary, trustee, or guardian or a sinking fund of a municipality, county, school district, or political subdivision of the state.

(b) The bonds may secure deposits of public funds of the state, a municipality, a county, a school district, or another political corporation or subdivision of the

state. A bond may provide this security up to its value if all unmatured coupons are attached.

SECTION 8. REFUNDING BONDS. The authority may issue bonds to refund all or part of its outstanding bonds issued under this Act, including matured but unpaid interest.

SECTION 9. TAX EXEMPTION. Bonds issued under this Act, transactions relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state, an agency or subdivision of the state, a municipality, or a special district.

SECTION 10. AUTHORIZATION. Before the authority may issue and sell bonds under this Act, the legislature by law must have authorized the specific projects in this Act, the General Appropriations Act, or the Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes).

SECTION 11. AMENDMENT. Sections 4 and 5, Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. COMPOSITION OF GOVERNING BOARD. The authority is governed by a board of directors composed of six [~~three~~] members appointed by the governor with the advice and consent of the senate. It is the intent of the legislature that the members of the board be selected on the basis of their expertise in matters relevant to the purposes and responsibilities of the authority. To the extent possible, members of the board shall represent all geographical areas of the state.

Sec. 5. TERMS. Members of the board are appointed for staggered terms of six years with two members' terms [~~one member's term~~] expiring on February 1 of each odd-numbered year.

SECTION 12. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes immediate effect.

(b) Section 4 of this Act takes effect on the date on which the constitutional amendment proposed by **S.J.R No. 56**, 70th Legislature, Regular Session, 1987, takes effect. If that amendment is not approved by the voters, that section has no effect.

SECTION 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendments were read.

Senator McFarland moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1407** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Anderson, Farabee, Caperton and Blake.

SENATE JOINT RESOLUTION 12 WITH HOUSE AMENDMENTS

Senator McFarland called **S.J.R. 12** from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Floor Amendment No. 1 - Berlanga

Amend **S.J.R. 12** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. That Article VIII, Section 1, of the Texas Constitution is amended to read as follows:

Sec. 1. (a) Taxation shall be equal and uniform.

(b) All real property and tangible personal property in this state, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

(c) The Legislature may provide for the taxation of intangible property and may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax.

(d) The Legislature by general law shall exempt household goods not held or used for the production of income and personal effects not held or used for the production of income, and the Legislature by general law may exempt all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale for debt, from ad valorem taxation.

(e) To promote economic development in the state, tangible personal property consisting of goods, wares, merchandise or ores, other than oil, gas, and other petroleum products, is exempt from ad valorem taxation if:

(1) the property is transported from outside this state into this State to be forwarded outside this State, whether or not the intention to forward the property outside this State was formed, or the destination outside this State to which the property is forwarded was specified when the transportation of the property into this state began;

(2) the property is detained in this State for assembling, storing, manufacturing, processing or fabrication purposes; and

(3) the property is not located or retained in this state for more than 175 days.

(f) Tangible personal property exempted from taxation in subsection (e) of this section is subject ot the following:

(1) A county, school district or municipality, including a home-rule city, may tax such property, located in such political subdivision, if the governing body of such named political subdivision takes official action to provide for the taxation of all or a stated percentage of the appraised value of such property.

(2) The above official action to tax all or a percentage of the appraised value of such property must be taken by the governing body of such above named political subdivisions either before January 1, 1988, or before April 1, 1988. If such official action is taken before January 1, 1988, it shall be effective for the tax year 1988. However, if such official action is taken prior to April 1, 1988, but after January 1, 1988, the official action shall not become effective until January 1, 1989.

(3) If official action is taken to tax a stated percentage of the appraised value of such property, subject to this subsection, such property shall not thereafter be

taxed by any above named political subdivisions at a higher percentage of the appraised value than was set in such official action. However, any such named political subdivisions may reduce such stated percentage of appraised value thereafter by official action.

(4) Any of the above named political subdivisions shall have the authority to exempt from the payment of taxation on such property located in such above named political subdivisions for the taxing year 1987.

(5) Any official action to tax such property may be rescinded by official action of any of such above named political subdivisions. In that event, such property located in such rescinding county, school district, or municipality shall be exempt from taxation in such above named political subdivision in each tax year beginning thereafter, and, if the governing body of such above named political subdivision so provides in the tax year of such action.

(g) The occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition. "The constitutional amendment providing for the exemption from ad valorem taxation of certain property that is located in the state for only a temporary period of time."

Floor Amendment No. 2 - Berlanga

Amend Floor Amendment No. 1 to **S.J.R. 12** as adopted as follows:

(1) Amend Section 1, Sec. 1(d) by striking all of same and substituting the following:

"(d) Personal property ~~[the Legislature by general law shall exempt household goods]~~ not held or used for the production of income, other than mobile homes, is exempt from ad valorem taxation ~~[and personal effects not held or used for the production of income]~~, and the Legislature by general law may exempt all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale or debt, from ad valorem taxation.

(2) Amend Section 2 by striking and substituting the following:

SECTION 2. (a) The proposed constitutional amendment to Article VIII, Section 1, Subsection (d) shall be submitted to the voters in a separate ballot at an election to be held on November 3, 1987. This ballot shall be printed to provide for voting for or against the proposition: "The Constitutional Amendment to allow the Legislature to exempt from ad valorem taxation personal property not held or used for the production of income".

(b) The proposed constitutional amendment contained in Article VIII, Section 1, Section (a), (b), (c), (e) and (f) shall be submitted to the voters in a separate ballot at an election to be held on November 3, 1987. This ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment providing for the exemption from ad valorem taxation of certain property that is located in the state for only a temporary period of time."

The amendments were read.

Senator McFarland moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.J.R. 12** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators McFarland, Chairman; Parker, Montford, Anderson and Glasgow.

SENATE RULE 74a SUSPENDED

On motion of Senator Jones and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendments to **S.B. 380**.

SENATE BILL 380 WITH HOUSE AMENDMENTS

Senator Jones called **S.B. 380** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Earley

Amend **S.B. 380** as follows:

(1) Insert a new Section 2 to read as follows:

SECTION 2. Chapter 5, Tax Code, is amended by adding Section 5.12 to read as follows:

Sec. 5.12. PERFORMANCE AUDIT OF APPRAISAL DISTRICT. (a) At the written request of the governing bodies of a majority of the taxing units participating in an appraisal district or of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, the State Property Tax Board shall audit the performance of the appraisal district. The governing bodies may request a general audit of the performance of the appraisal district, or may request an audit of only one or more particular duties, practices, functions, departments, or other appraisal district matters.

(b) At the written request of not less than 10 percent of the owners of all property in an appraisal district belonging to a class of property established by the State Property Tax Board for purposes of the study conducted under Section 11.86, Education Code, if the class constitutes at least five percent of the appraised value of taxable property in the district in the preceding year, or at the written request of the owners of property representing not less than 10 percent of the appraised value of all property in the district belonging to a class of property established for purposes of the study conducted by the board for purposes of Section 11.86, Education Code, if the class constitutes at least five percent of the appraised value of taxable property in the district in the preceding year, the board shall audit the performance of the appraisal district. The property owners may request a general audit of the performance of the appraisal district, or may request an audit of only one or more particular duties, practices, functions, departments, or other appraisal district matters. A property owner may authorize an agent to sign a request for an audit under this subsection on the property owner's behalf. The board may require a person signing a request for an audit to provide proof that the person is entitled to sign the request as a property owner or as the agent of a property owner.

(c) The board shall perform an audit requested under this section as soon as practicable after the request is made. The board may not be required to audit the financial condition of an appraisal district or to audit a district's tax collections. If the request is for an audit limited to one or more particular matters, the board's audit must be limited to those matters.

(d) In conducting a general audit, the board shall consider and report on:

(1) the extent to which the district complies with applicable law or generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviations from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by Subsection (c) of this section, any other matter included in the request for the audit.

(e) In conducting an audit under this section, the board is entitled to have access at all times to the books, appraisal and other records, reports, vouchers, and other information, whether confidential or not, of the appraisal district. The board may rely on any analysis it has made previously relating to the appraisal district if the previous analysis is useful or relevant to the audit. The board may require the assistance of appraisal district officers or employees that does not interfere significantly with the ordinary functions of the appraisal district.

(f) The board shall report the results of its audit in writing to the governing body of each taxing unit entitled to vote on appraisal district directors, to the chief appraiser, and to the presiding officer of the appraisal district board of directors. If the audit was requested under Subsection (b) of this section, the board shall also provide a report to a representative of the property owners who requested the audit.

(g) If the audit is requested under Subsection (a) of this section, the appraisal district shall reimburse the board for the costs incurred in conducting the audit and making its report of the audit. The costs shall be allocated among the taxing units participating in the district in the same manner as an operating expense of the district. If the audit is requested under Subsection (b) of this section, the property owners who requested the audit shall reimburse the board for the costs incurred in conducting the audit and making its report of the audit, and shall allocate the costs among those property owners in proportion to the appraised value of each property owner's property in the district or on such other basis as the property owners agree. If the audit determines that the median level of appraisal for a class of property exceeds 110 percent or that the appraised value for a class of property varies at least 10 percent from the median level of appraisal of other classes of property in the district, within 90 days after the date a request is made by the property owners for reimbursement the appraisal district shall reimburse the property owners who requested the audit for the amount paid to the board for the costs incurred in conducting the audit and making the report. Before conducting an audit under this section, the board may require the requesting taxing units or property owners to provide the board with a bond, deposit, or other financial security sufficient to cover the expected costs of conducting the audit and making the report. For purposes of this subsection, the costs incurred in conducting and making a report of an audit include expenses related to salaries, professional fees, travel, reproduction and printing, and consumable supplies that are directly attributable to the audit.

(h) At any time after the request for an audit is made, the board shall discontinue the audit in whole or part if requested to do so by:

(1) the governing bodies of a majority of the taxing units participating in the district, if the audit was requested by a majority of those units;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, if the audit was requested by a majority of those units; or

(3) if the audit was requested under Subsection (b) of this section, by the taxpayers who requested the audit.

(i) The board by rule may adopt procedures, audit standards, and forms for the administration of this section.

(2) Renumber existing Section 2 as Section 3.

(3) Strike existing Section 3 and substitute the following:

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1987.

(b) An audit may not be requested under Section 5.12, Tax Code, as added by this Act, before January 1, 1988.

(4) Renumber existing Section 4 as Section 5.

Floor Amendment No. 2 - Stiles

Amend **S.B. 380** by adding a new section appropriately numbered to read as follows:

SECTION 1. Subsection B, Chapter 23, Tax Code, is amended by adding Section 23.11 to read as follows:

Sec. 23.11. RESIDENCE HOMESTEADS. (a) A residence homestead shall be appraised at the lesser of the following amounts:

(1) the market value of the residence homestead for the current year; or

(2) the residential use value of the residence homestead for the current year.

(b) An application is not required for a residence homestead to be appraised under this section.

(c) The chief appraiser shall include in the appraisal records both the market value of a residence homestead and its residential use value as determined by this section.

(d) For purposes of this section, "residential use value" means the price at which the property would transfer for cash or its equivalent under prevailing market conditions if:

(1) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(2) there were no possibility that the property could be used for a purpose other than its current residential use, as if there were a permanent legal prohibition against its use for any other purpose, and that fact were known by both the seller and the purchaser;

(3) both the seller and the purchaser know of all the uses and purposes for which the property is currently being used and of all the individual characteristics particular to, surrounding, or in any way affecting the marketability of the property; and

(4) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

Floor Amendment No. 3 - Stiles

Amend **S.B. 380** by adding a new section appropriately numbered to read as follows:

Sec. 32.014. TAX LIEN ON MANUFACTURED HOME SUBJECT TO SECURITY INTEREST. (a) A tax lien to secure the payment of a tax and any penalties and interest imposed on a manufactured home does not attach to the real property on which the manufactured home is located, even if the manufactured home is affixed to the real property by installation on a permanent foundation, if on the January 1 on which the tax is imposed there exists a purchase money security interest in the manufactured home.

(b) In this subsection, "manufactured home" has the meaning assigned by Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes).

Floor Amendment No. 4 - Stiles

Amend **S.B. 380** by adding a new section appropriately numbered to read as follows:

SECTION _____. Section 41.47, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) The notice of the issuance of the order must contain a prominently printed statement in upper-case bold lettering informing the property owner of the property owner's right to appeal the board's decision to district court. The statement must describe the deadline prescribed by Section 42.06(a) of this code for filing a written notice of appeal and the deadline prescribed by Section 42.21(a) of this code for filing the petition for review with the district court.

Floor Amendment No. 5 - Eckels

Amend **S.B. 380** as follows:

Insert a new Section 3 as follows and renumber subsequent sections accordingly:

SECTION 3. Subchapter B, Chapter 42, Tax Code, is amended by adding Section 42.30 to read as follows:

Sec. 42.30. TIME LIMIT FOR DISTRICT COURT REVIEW. (a) The district court shall render a judgment on the merits of an appeal brought under this chapter by a property owner, appraisal district, or taxing unit within one year after the earliest date on which process is served on each party to the appeal, exclusive of any period of:

(1) delay caused by a continuance granted at the request of the property owner;

(2) unavoidable court delay; or

(3) any other delay caused by the property owner or granted by the court on behalf of the property owner.

(b) If the district court does not issue a judgment in the time provided by this section, on the motion of the property owner the court shall enter a judgment on behalf of the property owner in accordance with the pleadings of the property owner. If more than one property owner is a party to the appeal, each property owner must join in the motion under this subsection.

(c) A property owner may waive the right to a judgment under Subsection (b) of this section in writing or in open court.

(d) A judgment issued under this section may not be appealed by an appraisal district or taxing unit under Section 42.28 of this code.

Floor Amendment No. 6 - Eckels

Amend **S.B. 380** by adding a section appropriately numbered to read as follows:

SECTION _____. Section 6.41(b), Tax Code, is amended to read as follows:

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members or, in a district established for a county with a population of at least 250,000, to not more than 15 members or, in a district established for a county with a population of at least 500,000, to not

more than 30 members or, in a district established for a county with a population of at least 1,500,000, to not more than 45 members.

SECTION _____. Section 6.411, Tax Code, is repealed.

Floor Amendment No. 7 - Eckels

Amend **S.B. 380** by deleting sections below added in Floor Amendment No. 6 on second reading:

SECTION _____. Section 6.41(b), Tax Code, is amended to read as follows:

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members or, in a district established for a county with a population of at least 250,000, to not more than 15 members or, in a district established for a county with a population of at least 500,000, to not more than 30 members or, in a district established for a county with a population of at least 1,500,000, to not more than 45 members.

SECTION _____. Section 6.411, Tax Code, is repealed.

The amendments were read.

Senator Jones moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 380** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jones, Chairman; Blake, Harris, McFarland and Sims.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1387

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1387** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI	MADLA
PARMER	GARCIA
TEJEDA	G. LUNA
WHITMIRE	RODRIGUEZ
BARRIENTOS	BEAUCHAMP
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 994

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 994** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN	DUTTON
ANDERSON	L. EVANS
MONTFORD	S. THOMPSON
WHITMIRE	G. THOMPSON
LYON	
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE HOUSE BILL 752
ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 752, Relating to the creation and operation of enterprise zones and the promotion of economic development through enterprise zones and through state and local tax, regulatory, and other incentives provided in conjunction with enterprise zones.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 752
ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 752** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2219 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2219, Relating to the creation, powers, and duties of the Texas Workers' Compensation Insurance Research Center.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 2219** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 88, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TEXAS WORKERS' COMPENSATION INSURANCE RESEARCH CENTER

Sec. 88.401. DEFINITIONS. In this subchapter:

(1) "Center" means the Texas Workers' Compensation Insurance Research Center.

(2) "Coordinating Council" means the Workers' Compensation Insurance Coordinating Council.

(3) "Executive director" means the executive director of the center.

Sec. 88.402. RESEARCH CENTER. (a) The Texas Workers' Compensation Insurance Research Center is established. The center shall be operated jointly by the Texas State Board of Insurance and the Texas Industrial Accident Board.

(b) The Industrial Accident Board and the State Board of Insurance shall jointly designate the executive director of the center.

(c) The state auditor annually shall audit the financial transactions of the center.

(d) On or before January 10 of each year, the center shall file with the governor and the presiding officer of each house of the legislature a complete and detailed report relating to the activities of the center and accounting for all funds received and disbursed by the center during the preceding year.

(e) The executive director shall prepare an annual research agenda for the center in consultation with the State Board of Insurance and the Industrial Accident Board. Following review and approval by the State Board of Insurance and the Industrial Accident Board, the executive director of the center shall submit the proposed research agenda to the coordinating council for its review and approval at the beginning of each calendar year. The executive director shall regularly inform the coordinating council of changes in the agenda.

Sec. 88.403. COORDINATING COUNCIL. (a) The Workers' Compensation Insurance Coordinating Council is created.

(b) The council is composed of five (5) members. One member must be a representative of the State Board of Insurance. One member must be a representative of the Industrial Accident Board. One member must be a representative of the Health Department of the State of Texas. One member must be a representative of the Texas Rehabilitation Commission. One member must be a representative of the Texas Employment Commission.

(c) The Council annually shall elect a Chairman from its appointed members. Council shall meet at least annually, and may meet at other times of the call of the Chairman, or on the petition of at least three (3) of its members.

(d) The Council shall:

(1) solicit and review proposals for research to be conducted at the center;

(2) review contracts;
(3) staff the center; and
(4) Establish general center policies, including:
(A) criteria for the selection of research studies;
(B) statistical data base development;
(C) educational policies; and
(D) other matters considered appropriate by the Council.

Sec. 88.404. CENTER POWERS AND DUTIES. (a) The center shall:

(1) gather, maintain, and publish statistical information relating to workers' compensation programs operated by other states in order to obtain data for an ongoing comparative evaluation of the effectiveness of the workers' compensation program operated in this state;

(2) design and conduct research studies on workers' compensation insurance cost containment and the prevention of workplace injury, occupational disease, and business interruption and publish and disseminate the findings and result of the studies; and

(3) develop programs for use by employers, employees, insurance companies, and other interested parties specifically designed to reduce job-related injury, occupational disease, and business interruption;

(4) contract with the Texas Engineering Experiment Station, or part of the Texas A&M University System to provide data base management and design, injury and health statistics and industrial systems engineering for the center;

(5) contract with the University of Texas School of Public Health at Houston, or part of the University of Texas Health Science Center, for a study of occupation injury and disease epidemiology and injury and health economics study.

(6) contract with any other public education institution in the state of Texas to provide any or all of the above listed items in section 1-5.

(b) The center shall publish an annual report of the data collected, statistical findings, activities, and accomplishments of the center.

Sec. 88.405. FUNDING; MAINTENANCE TAX. (a) The center shall be funded through the assessment of an annual maintenance tax collected from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state. The State Board of Insurance shall set the rate of the maintenance tax, in an amount not to exceed two-tenths percent of the correctly reported gross workers' compensation insurance premiums of those insurers as reported to the board under Subchapter D, Chapter 5, Insurance Code. The State Board of Insurance shall set the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay the expenses of the center. The tax assessed under this section is in addition to all other taxes imposed on those insurers for workers' compensation purposes, and shall be paid to the State Board of Insurance at the time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The State Board of Insurance may adopt the rules as necessary relating to the assessment and collection of the maintenance tax imposed under Subsection (a) of this section.

(c) The State Board of Insurance shall remit all funds received under this section to the comptroller of public accounts for deposit in the state treasury to the credit of the general revenue fund.

Sec. 88.406 (a) The executive director shall submit an annual proposed budget for the center, which shall include staffing cost, to the State Board of Insurance and the Industrial Accident Board for review and approval. Once approved it shall be part of the budget of the Industrial Accident Board.

(b) Notwithstanding any other provisions of the law, the Industrial Accident Board and the State Board of Insurance shall furnish the executive director all loss and financial information contained within their files pertaining to workers' compensation. No specific company or individual may be identified when information is furnished under this provision.

Sec. 88.407. APPLICATION OF SUNSET ACT. The Texas Workers' Compensation Insurance Research Center is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the center is abolished and this subchapter expires September 1, 1999.

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2219 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2219** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

VOTE ON FINAL PASSAGE OF HOUSE BILL 1606 RECONSIDERED

On motion of Senator Harris, the vote by which **H.B. 1606** was finally passed was reconsidered by the following vote: Yeas 19, Nays 10.

Yeas: Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Green, Harris, Henderson, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sims, Uribe, Whitmire, Zaffirini.

Nays: Anderson, Edwards, Farabee, Glasgow, Johnson, Jones, Lyon, Sarpalius, Truan, Washington.

Absent: Parmer, Tejeda.

Question - Shall the bill be finally passed?

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1502, Relating to the creation, administration, powers, duties, operations, financing and dissolution of Lakeside Utility and Reclamation District. (Amended)

S.B. 1373, Relating to the creation, administration, powers, duties, operations, and financing of and the annexation of territory to and exclusion of territory from the Cliffs Municipal Utility District; providing for the issuance of bonds and the levy of property taxes. (Substituted)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 356

Senator Farabee called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 356** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 356** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Farabee, Chairman; Washington, Anderson, Green and Caperton.

COMMITTEE SUBSTITUTE HOUSE BILL 1906 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1906, Relating to the prosecution of minors for certain traffic violations.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1906 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1906** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2560 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2560, Relating to liability of a professional review body for professional review actions taken by that body.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2560** by striking everything below the enacting clause and substituting the following in lieu thereof:

SECTION 1. Section 1.03, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. DEFINITIONS. (a) In this Act:

(1) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(2) "Board" means the Texas State Board of Medical Examiners.

(3) "Continuing threat to the public welfare" means that, in the judgment of the board, any medical peer review committee in this state, any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state, any physician engaged in graduate medical education or training, or any medical student, the acts or omissions of the physician through his lack of competence, impaired status, or failure to care adequately for his patients constitute a real and present danger to the health of his patients.

(4) "Disciplinary order means any action taken under Section 4.01 and Section 4.12.

(5) "Health care entity" means:

(A) a hospital that is licensed pursuant to the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or the Mental Health Code (Articles 5547 - 88 through 100, Vernon's Texas Civil Statutes);

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, or other health-care facility, that provides medical or health care services and that follows a formal peer review process for the purposes of furthering quality medical or health care; and

(C) a professional society or association, or committee thereof, of physicians that follows a formal peer review process for the purpose of furthering quality medical or health care.

[~~(5) "Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital nursing home, or other health-care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the society, hospital, nursing home, or other health-care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health-care services.~~]

(6) "Medical peer review committee" or "professional review body" means a committee of a health care entity, the governing board of a health care entity or the medical staff of a health care entity provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians. Such a committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other persons or organizatons that serve the committee in any capacity.

(7) [~~(4)~~] "Open Meetings Law" means Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(8) [~~(5)~~] "Open Records Law" means Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(9) [~~(6)~~] "Medical peer review" or "professional review action" means the evaluation of medical and health-care services, including evaluation of the qualifications of professional health-care practitioners and of patient care rendered by those practitioners. The term includes evaluation of the merits of complaints relating to health-care practitioners and determinations or recommendations regarding those complaints. The term specifically includes evaluation of:

(A) accuracy of diagnosis;

(B) quality of the care rendered by a health-care practitioner;

(C) reports made to a medical peer review committee concerning activities under the committee's review authority;

(D) reports by a medical peer review committee to other committees or to the board as permitted or required by law; and

(E) implementation of the duties of a medical peer review committee by its members, agents, or employees.

(10) "Person" means an individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(11) [~~(7)~~] "Physician" and "surgeon" shall be construed as synonymous, and the terms "practitioners," "practitioners of medicine," and "practice of medicine," as used in this Act, shall be construed to refer to and include physicians and surgeons.

(12) [~~(8)~~] "Practicing medicine." A person shall be considered to be practicing medicine within this Act:

(A) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof; or

(B) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(13) [~~(9)~~] "State" means any state, territory, or insular possession of the United States and the District of Columbia.

(14) [~~(10)~~] "Texas Sunset Act" means Chapter 325, Government Code.

(b) [~~(11)~~] Any term, word, word of art, or phrase that is used in this Act and not otherwise defined in this Act has the meaning as is consistent with the common law.

SECTION 2. Subsection (f), Section 2.05, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) A person currently serving as president, vice-president, secretary, or treasurer of a statewide or national organization incorporated for the purpose of representing the entire profession licensed to practice medicine in this state or the United States [~~the State of Texas~~] or an employee of such an organization may not serve as a member of the board. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

SECTION 3. Section 2.07, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. OFFICERS; MEETINGS OF THE BOARD. (a) At the first meeting of the board after each biennial appointment, the board shall elect from its members a president, vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties.

(b) Regular meetings shall be held at least four times [~~twice~~] a year at times and places as the board shall consider most convenient for applicants and board members. Special meetings may be held in accordance with rules adopted by the board. After hearing all evidence and arguments in open meeting, the board may in its discretion conduct deliberations relative to applications for licensure and

licensee disciplinary actions in executive sessions. The board shall vote and announce its decisions in open session.

SECTION 4. Section 2.09, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (f), (g), (i), (l), (p), and (s) and by adding Subsection (w) to read as follows:

(b) The Board shall appoint an Executive Director who shall be its chief executive and administrative officer, who shall be charged with primary responsibility of administering, enforcing, and carrying out the provisions of the Medical Practice Act under the control and supervision and at the direction of the Board. The Executive Director shall hold such position at the pleasure of Board and may be discharged at any time. The Board may act under its rules through the Executive Director, an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act. Any duty of the secretary-treasurer in this Act may be performed by the Executive Director within the discretion of the Board. Any reference to secretary-treasurer shall have the same meaning as Executive Director when so designated by the Board.

(f) An employee of the board may not be employed or paid any fee for services rendered by a statewide or national organization incorporated for the purpose of representing the entire profession licensed to practice medicine in this state [~~the State of Texas~~] or the United States. A person is not eligible to serve as an employee of the board if the person is related within the second degree by affinity or within the third degree by consanguinity to a person who is employed or paid any fee for services rendered by such an organization. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

(g) A person who is required personally to register as a lobbyist under Chapter 305, Government Code representing physicians, health-care entities, or health-care related professions, may not be employed by the board in any capacity [~~act as the general counsel of the board~~].

(i) The board shall have the power to appoint committees from its own membership and to make rules and regulations not inconsistent with this Act as may be necessary for the performance of its duties. The duties of any of the committees appointed from the board membership shall be to consider matters pertaining to the enforcement of this Act and the regulations promulgated in accordance with this Act as shall be referred to the committees, and they shall make recommendations to the board with respect to those matters. The board shall have the power, and may delegate that power to the executive director or the secretary-treasurer [~~any committee~~], to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records, and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. All subpoenas issued at the request of the board staff may be served either personally by the board's investigators or by certified mail. The board shall pay for photocopies subpoenaed at the board staff's request a reasonable fee not to exceed the amount the board may charge for copies of its records. There shall be appointed not less than one member of the board who meets the qualifications of Subsection (c) of Section 2.05 of this Act, and one member of the board who meets the qualifications of Subsection (d) of Section 2.05 of this Act, on all committees of the board. Should a member appointed to a committee as provided for in this subsection decline to accept or not be qualified under this Act to serve on the committee the position on the committee may be filled from any other member of the board regardless of qualification. In the event a member of the board who meets the qualifications of Subsection (c) or (d) of Section 2.05 of this Act is not elected to an office which would make the member a member of the executive committee of the board as provided for in this Act, then the board shall cause to be appointed

additional members of that committee so that at least one member serves on the committee who meets the qualifications of Subsection (c) of Section 2.05 of this Act and at least one member serves on the committee who meets the qualifications of Subsection (d) of Section 2.05 of this Act.

(l) The board shall be represented in court proceedings by the attorney general. The board and the employees of the board shall assist the local prosecuting officers of any county in the enforcement of all laws of the state prohibiting the unlawful practice of medicine, this Act, and other matters; provided that all of the prosecutions shall, unless otherwise provided, be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

(p) The board shall disseminate at least twice a year and at other times determined necessary by the board [~~to all licensed physicians who are practicing in the State of Texas and, upon request, to the general public~~] information as is of significant interest to the physicians in Texas. The information must include summaries of disciplinary orders made against physicians licensed in this state, [~~including~~] board activities and functions, pertinent changes in this Act or board rules and regulations, and attorney general opinions. The requirements of this section are in addition to the reporting requirements imposed under Section 4.14 of this Act. The board shall disseminate the information:

(1) to all licensed physicians practicing in this state;

(2) to all health care entities and other board-designated health-care institutions operating in this state;

(3) to all members of health-related legislative committees;

(4) on written request, to members of the general public; and

(5) to public libraries throughout the state.

(s) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. On written [~~The board on~~] request the board shall make [~~the~~] information available to the general public for a reasonable fee to cover expenses and appropriate state agencies including a summary of any previous disciplinary orders by the board against a specific physician licensed in this state, the date of the order, and the current status of the order. The board shall establish an eight - hour toll-free telephone number to make the information immediately available to any caller.

(w) The board shall, on request from a legislative committee created under the Legislative Reorganization Act of 1961 (Subchapter B, Chapter 301, Government Code), release only to the members of such committee all information regarding a complaint against a physician to aid in a legitimate legislative inquiry, but in no case shall the complainant and/or patient be identified. The identity of the physician may be revealed only to the members of the committee.

SECTION 5. Subsection (h), Section 3.01, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is revised to read as follows:

(h) The secretary-treasurer or the executive director shall review each application for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. The secretary-treasurer or the executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the secretary-treasurer or the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the secretary-treasurer or the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the

board unless the applicant requests an appellate hearing before a hearing examiner appointed by the board within 20 days of receipt of notice of the committee's determination. The committee may refer any application for an appellate hearing on its own motion. The board may elect to hear any appeal in lieu of proceedings before a hearing examiner, and it shall adopt, modify, or reject each decision made by a hearing examiner. The board also shall adopt, modify, or reject each recommendation of ineligibility made by the secretary-treasurer or the executive director or by the committee, unless the applicant has requested a timely review of the recommendation. Such action by the board shall constitute a final administrative decision concerning licensure. Any hearing before the board or before a hearing examiner under this subsection becomes a contested case under the Administrative Procedure Act. A physician whose application for licensure is denied by the board shall receive a written statement, upon request, containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the open records law. The board may disclose such reports to appropriate licensing authorities in other states upon request.

[~~(h) The secretary-treasurer shall determine the eligibility of each applicant for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. If the secretary-treasurer cannot determine the eligibility of an applicant, then a committee of the board shall determine eligibility of the applicant. If the committee of the board cannot determine the eligibility of an applicant, then the board shall determine eligibility of the applicant. If a physician's application is denied by the secretary-treasurer, the applicant may request within 20 days of receipt of denial that a committee of the board determine his eligibility. If a physician's application is denied by the committee of the board, then the applicant may request within 20 days of denial a hearing to appeal the committee's decisions. The board shall decide at the next regular board meeting the final administrative decision as to licensure. This hearing is not a contested case under the Administrative Procedure Act, but the applicant is entitled to legal counsel of his choice and may appeal the decision of the board to a district court under Section 19 of the Administrative Procedure Act. The denied applicant is entitled to know in writing why he was denied, but all reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law.~~]

SECTION 6. Subsections (a) and (b), Section 3.10, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All annual registration fees collected by the board shall be placed in the State Treasury to the credit of the medical registration fund. The fees deposited to this special fund shall be credited to the appropriations of the board and may [~~shall~~] be spent [~~expended~~] only as provided by [~~for items set out in~~] the General Appropriations Act, this Act, or other applicable statutes. Money in that fund may[~~;~~ ~~to~~] be used by the board and under its direction in the enforcement of this Act, the prohibition of the unlawful practice of medicine, [~~and~~] the dissemination of information to prevent the violation of the laws, and [~~to aid in~~] the prosecution of those who violate the laws. All distributions from the fund may be made only upon written approval of the secretary-treasurer of the board or his designated representative, and the comptroller shall upon requisition of the board from time to time draw warrants upon the State Treasurer for the amounts specified in the requisition.

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

(1) for processing and granting a license by reciprocity to a licensee of another state ..... $700 [~~$500~~]

(2) for processing an application and administration of a partial examination for licensure..... $700 [~~$500~~]

(3) for processing an application and administration of a complete examination for licensure..... $700 [~~$500~~]

(4) for processing an application and issuance of a temporary license...$200 [~~$100~~]

(5) for processing an application and issuance of a duplicate license.....$200 [~~$100~~]

(6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license..... $700 [~~$500~~]

(7) for processing an application and issuance of an annual registration of a licensee..... $200 [~~$100~~]

(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs..... $200 [~~$100~~]

(9) for processing an application and issuance of an endorsement to other state medical boards..... $200 [~~$100~~]

(10) for processing and issuance of a permit to a physician who supervises a physician assistant..... $200

(11) for processing and issuance of a permit to a physician who supervises an acupuncturist..... $200.

SECTION 7. Section 4.01, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. GROUNDS FOR CANCELLATION, REVOCATION, SUSPENSION, AND PROBATION OF LICENSE. [~~Except for practitioners convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513),~~] (a) Except as provided herein, the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

(b) On proof that a practitioner of medicine has been initially convicted of a felony or the initial finding of the trier of fact of guilt of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

(c) The board shall suspend the license of a practitioner who is serving a prison term in a state or federal penitentiary during his incarceration regardless of the offense.

SECTION 8. Section 4.04, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.04. INVESTIGATION. (a) Except as otherwise provided by this section, all [~~All~~] investigations shall be conducted by the board or persons authorized by the board to conduct them. The board may commission investigators as peace officers for the purpose of enforcing this Act. However, investigators of the board so commissioned as peace officers may not carry a firearm or exercise arrest

powers. Each complaint against a physician which requires a determination of medical competency shall be reviewed by a board member, consultant, or employee with medical background considered sufficient by the board.

(b) Unless it would jeopardize an investigation, the Board shall notify the physician that a complaint has been filed and the nature of the complaint. The Board shall make a preliminary investigation of the complaint. The first consideration of the Board shall be whether the physician constitutes a continuing threat to the public welfare. The Board may, unless precluded by the law or this Act, make a disposition of any complaint or matter relating to this Act, or of any contested case by stipulation, agreed settlement or consent order. The Board shall adopt such rules as are appropriate to carry out such disposition. Such disposition shall be considered a disciplinary order.

SECTION 9. Subsections (b) and (d), Section 4.05, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board to be served at the licensee's expense.

(d) All complaints, adverse reports, [and] investigation files, other investigation [and] reports, other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline. However, investigative information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license, or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges. If the investigative information in the possession of the board or its employees or agents indicates a crime may have been committed, the information shall be reported to the proper law enforcement agency. The board shall cooperate and assist all law enforcement agencies conducting criminal investigations of licensees by providing information which is relevant to the criminal investigation to the investigating agency. Any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation. The board shall provide information upon request to a health care entity concerning whether a complaint has been filed against a licensee or the licensee is under investigation by the board and the basis of and current status of that complaint or investigation. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the complaining party consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

SECTION 10. Subsections (a) and (b), Section 4.11, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not

grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period. The board may not grant probation to a physician who poses, through the practice of medicine, a continuing threat to the public welfare.

(b) The board may at any time while the probationer remains on probation, with adequate grounds being shown, hold a hearing and, upon majority vote, rescind the probation and enforce the board's original action and shall do so if the board determines that the probationer poses, through the practice of medicine, a continuing threat to the public welfare.

SECTION 11. Section 4.12, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.12. METHODS OF DISCIPLINE. (a) Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it shall [~~may~~] enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public [~~or private~~] reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine or stipulating periodic Board review;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;

(6) require the person to participate in a program of education or counseling prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period of time; or

(8) require the person to perform public service considered appropriate by the board.

(b) Providing however, if the Board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare, it shall revoke, suspend or deny the license.

SECTION 12. Section 4.13, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. TEMPORARY SUSPENSION OF LICENSE. If the executive committee of the board determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute a continuing threat to the public welfare [~~an immediate danger to the public~~], the executive committee of the board shall [~~may~~] temporarily suspend the license of that person. The license may be suspended under this section without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

SECTION 13. Section 4.14, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.14. REPORT OF BOARD ACTIONS. The board shall report immediately [~~within 30 days~~] the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, any entity responsible for the administration of Medicare and Medicaid in this state, the U.S. Secretary of Health and Human Services or the secretary's designee, and the complainant. If the board, during its review of a complaint against any physician, discovers an act or omission potentially constituting a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs, the board shall report such act or omission to the appropriate prosecuting authority immediately except the board may exercise discretion in the case of impaired physicians actively participating in board-approved or sanctioned care, counseling, or treatment.

SECTION 14. Subdivision (3), Subsection (c), Section 5.02, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) The advisory committee shall advise the board on matters relating to physician assistants. In order to assure that the advisory committee is able to exercise properly its advisory powers, the board shall provide the advisory committee with timely notice of all board meetings on matters relating to physician assistants and a copy of the minutes of all board meetings on matters relating to physician assistants. In addition, the board may not adopt any rule relating to the practice of physician assistants that is not an emergency matter unless the proposed rule has been submitted to the advisory committee for review and comment at least 30 days prior to the adoption of the rule.

SECTION 15. Subsections (a), (b), and (c), Section 5.03, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this section:

(1) "Committee" means a district review committee [~~created under Subchapter C of the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes)~~].

(2) "District" means a [~~the~~] district established under Subsection (b) of this section [~~pursuant to the Medical Liability and Insurance Improvement Act of Texas~~].

(b) The number of districts and the geographic area of a district composed of various counties shall be designated by the board. The board, after a public hearing, may revise the number of districts and the composition of the various counties as it considers appropriate. In the event of change of the number or the composition of the various counties, the board shall follow the same procedure as applied to the initial designations.

(c) Each committee is composed of five [~~three~~] persons appointed by the governor from among persons who have resided [~~and practiced medicine~~] in the district for more than three years before their appointment. Three members must be doctors of medicine (MD) who meet the qualifications of Subsection (b) of Section 2.05 of this Act. One member must be a doctor of osteopathic medicine (DO) who meets the qualifications of Subsection (c) of Section 2.05 of this Act. One member must be a public representative who meets the qualifications of Subsection (d) of Section 2.05 of this Act.

SECTION 16. Section 5.05, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended by repealing Subsections (b) and (c).

SECTION 17. Section 5.05, Medical Practices Act, as amended (Article 4496b, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding new Subsections (f) and (g) as follows:

Sec. 5.05. (a) The board shall, in consultation with the State Board of Insurance, adopt rules for reporting data required by this Section. Other claim reports required under state and federal statutes shall be considered in determining the data to be reported, form of the report and frequency of reporting under the rules. Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data adopted under [~~described in Subsections (b) and (c) of~~] this section at the time prescribed. The report or data shall be provided with respect to claims in which indemnity payments were paid or ordered under a medical professional liability insurance policy [~~a complaint filed against an insured in a court, if the complaint seeks damages relating to the services, and with respect to settlement of a claim or lawsuit made on behalf of the insured~~]. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance or is insured by a nonadmitted carrier or insured by an entity not subject to this Act, the information required to be reported in [~~Subsections (b) and (c) of~~] this section shall be the responsibility of the physician.

(f) The board shall review the information relating to a physician against whom three or more malpractice claims have been reported within a five-year period as if a complaint against that physician had been made to the board under Section 4.02 of this Act.

(g) The State Board of Insurance may impose on any insurer subject to this Act sanctions authorized by Section 7 of Article 1.10, Texas Insurance Code, if such insurer fails to report such data as prescribed by this Section.

SECTION 18. Section 5.06, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.06. REPORTING AND CONFIDENTIALITY REQUIREMENTS [~~BY MEDICAL PEER REVIEW COMMITTEE OR PHYSICIANS~~]. (a) The provisions of the Health Care Quality Improvement Act of 1986 (Public Law No. 99-660) apply to a professional review action taken by a professional review body in this state on or after the effective date of this Act.

(b) Each medical peer review committee or health care entity shall report in writing to the board the results and circumstances of any professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days, accepts the surrender of clinical privileges of a physician while the physician is under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding, or in the case of an entity which is a professional society or association, takes a professional review action which adversely affects the membership of a physician in the society or association. The duty to report under this section shall not be nullified through contract.

(c) A report made under this section is confidential and is not subject to disclosure under the open records law. In any proceeding brought under this subchapter, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

(d) Any medical peer review committee in this state, any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state, any physician engaged in graduate medical education or training, or any medical student shall [~~may~~] report relevant information to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee, physician, or medical student, the physician poses a continuing threat to the public welfare through the practice of medicine [~~that information relating to the physician~~

~~reasonably raises a question with respect to his competency~~]. The duty to report under this section shall not be nullified through contract.

(e) [~~(b)~~] Any committee of a professional medical society or association comprised primarily of physicians, its staff, or any district or local intervenor participating in a program established to aid physicians whose ability to practice medicine is impaired, or reasonably believed to be impaired, by drug or alcohol abuse or mental or physical illness may report to the board or the health care entity in which the physician has clinical privileges the name of the impaired physician together with the pertinent information relating to that impairment and shall report to the board and the health care entity, if known, in which the physician has clinical privileges if the committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare. [~~A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may also report to the board the name of the member, together with the pertinent information relating to the action.~~]

(f) [~~(c)~~] The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board does not, in itself, preclude any action by a health care entity [~~hospital or other health care facility or professional society composed primarily of physicians~~] to suspend, restrict, or revoke the privileges or membership of the physician.

(g) Except as otherwise provided by this Act, all proceedings and records of a medical peer review committee are confidential, and all communications made to a medical peer review committee are privileged. If a judge makes a preliminary finding that such proceedings, records or communications are relevant to an action, then such proceedings, records or communications are not confidential to the extent they are deemed relevant.

(h) Written or oral communications made to a medical peer review committee and the records and proceedings of such a committee may be disclosed to another medical peer review committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state.

(i) Disclosure of confidential peer review committee information to the affected physician pertinent to the matter under review shall not constitute waiver of the confidentiality provisions provided in this Act. If a medical peer review committee takes action that could result in censure, suspension, restriction, limitation, revocation, or denial of membership or privileges in a health care entity, the affected physician shall be provided a written copy of the recommendation of the medical peer review committee and a copy of the final decision, including a statement of the basis for the decision.

(j) Unless disclosure is required or authorized by law, records or determinations of or communications to a medical peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privileges created by this Act may be invoked by any person or organization in any civil judicial or administrative proceeding, unless the person or organization has secured a waiver of the privilege executed in writing by the chairman, vice-chairman, or secretary of the affected medical peer review committee. If under Subsection (o) of this section a medical peer review committee, a person participating in peer review, or any organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in his or her own defense, then a plaintiff in such a proceeding may disclose records or determinations of or communications to a medical peer review committee in

rebuttal to information supplied by the defendant. Any person seeking access to privileged information must plead and prove waiver of the privilege. A member, employee, or agent of a medical peer review committee who provides access to otherwise privileged communications or records in cooperation with law enforcement authorities in criminal investigations is not considered to have waived any privilege established under this Act.

(k) Governing bodies and medical staffs of health care entities and others shall comply fully with a subpoena for documents or information issued by the board under Subsection (i) of Section 2.09 of this Act. The disclosure of documents or information under such a subpoena does not constitute a waiver of the privilege associated with medical peer review committee proceedings. Failure to comply with such a subpoena constitutes groups for disciplinary action against the facility or individual by the appropriate licensing board.

(l) A cause of action does not accrue against the members, agents, or employees of a medical peer review committee or against the health care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review as defined by this Act.

(m) A person, health care entity, or medical peer review committee, that, without malice, participates in medical peer review activity or furnishes records, information, or assistance to a medical peer review committee or the board is immune from any civil liability arising from such an act.

(n) A person or health care entity may not be found liable in any civil action for failure to report to the Board unless the failure was committed knowingly or wilfully, except that the appropriate state licensing body may take action against a licensed institution or person for not reporting as required under this Act.

(o) A medical peer review committee, a person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in peer review, may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in its or his own defense. Such a use does not constitute a waiver of the confidential and privileged nature of medical peer review committee proceedings.

(p) A medical peer review committee, a person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, attorney's fees, and any damages incurred as a result of the civil action if the plaintiff's original suit is determined to be frivolous or brought in bad faith.

(q)(1) No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting to the board under this Act. A person has a cause of action against a health care entity, or the owner or employee of such an entity, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting to the board under Subsection (a), (c), or (d) of this section. The person may recover:

(A) actual damages, including damages for mental anguish even though no other injury is shown, or $1,000, whichever amount is greater;

(B) exemplary damages;

(C) costs of court; and

(D) reasonable attorney's fees.

(2) In addition to amounts recovered under Subdivision (1) of this subsection, a person whose employment is suspended or terminated in violation of this section is entitled to:

(A) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and

(B) compensation for wages lost during the period of suspension or termination.

(3) A person who sues under this section has the burden of proof, but in the event of a determination by either the board or a court of competent jurisdiction that the reported case made the subject of the cause of action was a case in which the person was required to report under Subsection (a), (c), or (d) of this section, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting an act that imperils the welfare of a patient if the person is suspended or terminated within 90 days after making a report in good faith.

(4) An action under this section may be brought in the district court of the county:

(A) in which the plaintiff resides;

(B) in which the plaintiff was employed by the defendant; or

(C) in which the defendant conducts business.

(r) [d] If a court of competent jurisdiction makes a final determination that a report or complaint made to the board was made in bad faith, then such complaint shall be expunged from the physician's or applicant's individual historical record. [~~On a determination by the board that a report submitted by a medical peer review committee is without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this section and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.~~]

(s) [~~(e)~~](1) Reports, information, or records received and maintained by the board pursuant to this section and Section 5.05 of this Act, including any material received or developed by the board during an investigation or hearing, are strictly confidential and subject to the provisions of Subdivision (4) of this subsection. However, the board may disclose this confidential information only:

(A) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(B) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(C) pursuant to an order of a court of competent jurisdiction; or

(D) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(2) Disciplinary orders [~~Orders~~] of the board [~~relating to disciplinary action~~] against a physician and known hospital suspensions for 30 days or longer of a physician relating to the competence of a physician are not confidential.

(3) In no event may records and reports disclosed pursuant to this article by the board to others, or reports and records received, maintained, or developed by the board, by a medical peer review [~~organization~~] committee [~~described in Subsection (a) or (b) of this section~~] or by a member of such a committee, or by a health care entity be available for discovery or court subpoena or introduced into evidence in a medical professional liability suit arising out of the provision of or failure to provide medical or health-care services, or in any other action for damages.

(4) A person who unlawfully discloses this confidential information possessed by the board commits a Class A misdemeanor.

(t) [~~(f)~~] The following persons are immune from civil liability:

(1) a person reporting to or furnishing information to a medical peer review committee or the board in good faith;

(2) a member, employee, or agent of the board, a member, employee, or agent of a medical peer review committee, a member, employee, or agent of a medical organization committee, or a medical organization district or local intervenor who takes any action or makes any recommendation within the scope of the functions of the board, committee, or intervenor program, if such member, employee, or agent acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her; and

(3) any member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

(u) [~~(g)~~] The reporting or assistance provided for in this section does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

SECTION 19. Section 5.07, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil statutes), is amended to read as follows:

Sec. 5.07. REPORT OF CERTAIN [~~FELONY~~] CONVICTIONS OR DETERMINATIONS. Within 30 days after the initial conviction or the initial finding of the trier of fact of guilt of a person known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs or after a determination by a court that adjudges or includes a finding that a physician is mentally ill or mentally incompetent, whether or not the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state, the clerk of the court of record in which the conviction, adjudication, or finding was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

SECTION 20. This Act takes effect September 1, 1987, except Section 16 of this Act is effective on January 1, 1988. This Act applies to reports required to be filed with the Texas State Board of Medical Examiners on or after that date.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Edwards offered the following amendment to the Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1, SECTION 18 of **H.B. 2560** on page 28, line 15 by adding the words anticompetitive, or a civil rights proceeding brought under Chapter 42 United States Code Annotated 1983," between the words "an" and "action"

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2560 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2560** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1933 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1933, Relating to the exclusion of certain territory from a rural fire prevention district.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 1933** as follows:

(1) On page 1, insert a new Section 1 to read as follows:

SECTION 1. Sections 8 and 12, Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 8. Upon granting of the petition, the Commissioners Court shall call an election to confirm the organization and authorize the levy of a tax, not to exceed three cents (3¢) on the One Hundred Dollars ($100.00) valuation, unless the proposed district will be located wholly or partly in a county with a population of more than 400,000, according to the most recent federal census. If the proposed district will be located wholly or partly in such a county, the Commissioners Court shall call an election to confirm the organization and to authorize the levy of a tax not to exceed six cents (6¢) on the One Hundred Dollars ($100.00) valuation. If it appears on the face of the petition that the proposed district is to encompass more than one county or portions thereof, then the Commissioners Court shall not call an election until such time as the Commissioners Court of any other county or such district is proposed shall have also granted the petition. When the foregoing has been accomplished, such election shall be held not less than thirty (30) nor more than sixty (60) days after the order calling the same; and notice of such election shall be given in the same mode and manner as hereinabove required for hearing on the petition to form the District. The notice shall contain the proposition submitted, the classification of voters who are authorized to vote, and the time and place for holding the election. Such time for holding the election if the district be multi-county shall be as near as practical to the time that the Commissioners Courts in the other counties have agreed to hold the election.

Sec. 12. (a) Except as provided in Sections 12A-12G of this Act, no indebtedness shall be contracted in any one year in excess of funds then on hand or which may be satisfied out of current revenues for the year. The Board of Fire

Commissioners shall annually levy and cause to be assessed and collected a tax upon all properties, real and personal, situated within the district and subject to district taxation, in an amount not to exceed the rate authorized by this Act [~~three cents (3¢) on the One Hundred Dollars ($100) valuation~~] for the support of the district, and for the purposes authorized in this Act. Such tax levy shall be certified to the County Tax Assessor-Collector, who shall be the Assessor-Collector for the district.

(b) If a district located wholly or partly in a county with a population of more than 400,000, according to the most recent federal census, had previously authorized the levy of a tax not to exceed three cents (3¢) on the One Hundred Dollar ($100.00) valuation of all taxable property in the district, the Board of Fire Commissioners may levy a tax exceeding three cents (3¢) but not exceeding six cents (6¢) on each One Hundred Dollars ($100.00) of valuation of all taxable property in the district subject to taxation if the maximum tax rate is approved by a majority of the qualified voters of the district voting at an election called and held for that purpose. The Board of Fire Commissioners may order an election on the question of increasing the maximum rate. In a single county district, the election shall be held on the first uniform election date that occurs at least thirty (30) days after the date on which the board orders the election. In a district located in more than one county, the election shall be held on the first election date for the election of the Board of Fire Commissioners that occurs at least thirty (30) days after the date on which the board orders the election. Except as otherwise required by the Election Code, the election notice, the manner of holding the election, and the voters' qualifications are governed by the applicable provisions of this Act. The ballot for the election must be printed to provide for voting for or against the propostition: "The levy of annual taxes by the Board of Fire Commissioners at a rate not to exceed six cents on each $100 of valuation of all taxable property in the district subject to district taxation."

(c) If the Board of Fire Commissioners finds that the election results are favorable to the proposition, the board may levy taxes as authorized by the proposition. If the board finds that the election results are not favorable to the proposition, another election on the question of raising the tax rate may not be called and held before the first anniversary of the most recent election at which voters disapproved the proposition.

(2) Renumber current Section 1 as Section 2.

(3) On page 2, strike current Section 2 and substitute the following:

SECTION 3. Section 17, Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes), is repealed.

SECTION 4. Sections 1 and 3 of this Act take effect on the date on which the constitutional amendment proposed by the 70th Legislature, Regular Session, 1987, authorizing an increase in the maximum property tax rate that certain rural fire prevention districts may adopt takes effect. If that amendment is not approved by the voters, Sections 1 and 3 of this Act have no effect.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1933 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1933** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 273 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 273, Relating to the revocation of a person's driver's license because the person is addicted to the use of alcohol or a controlled substance.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 273** as follows:

1. Add new SECTION 2, 3, and 4 to read as follows:

SECTION 2. Section 143A, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 143A. DISMISSAL OF CERTAIN MISDEMEANOR CHARGES UPON COMPLETING DRIVING SAFETY COURSE. (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 51, committed while operating a motor vehicle, the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or another driving safety course approved by the court, if:

(A) the person enters a plea either in person or in writing of no contest or guilty and presents to the court an oral or written request [~~or written motion~~] to take a course;

(B) the person has a valid Texas driver's license or permit; and

(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense, and the person is not in the process of taking a course under this subdivision nor has completed a course under this subdivision that is not yet reflected on his driving record.

(b) When the person complies with the provisions of Subsection (a) of this section and the evidence presented is accepted by the court, the court shall dismiss the charge; provided, however, that only one offense may be dismissed under one defensive driving course.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose. Insurance companies are

specifically prohibited from increasing or charging a fee or premium as a result of the defensive driving course or the alleged offense, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision.

(c) The court may, at its option, require the person requesting a defensive driving course to pay a fee not to exceed $10 to cover the expense of administering this Act. Fees collected under this Act by municipal courts shall be deposited in the municipal treasury. Fees collected by other courts shall be deposited in the county treasury of the county where the court is located.

SECTION 3. Section 1 takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

2. Amend the caption to read as follows:

Relating to certain actions affecting a person's drivers license.

The amendment was read and was adopted by the following vote: Yeas 24, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Green, Harris, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Santiesteban, Sims, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Parker, Sarpalius.

Absent: Caperton, Henderson, Montford, Parmer, Tejeda.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 273 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 273** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 176** and has requested the appointment of a Conference Committee to consider the differences

between the two Houses: D. Hudson, Chairman; Hollowell, Delco, Oakley and Roberts.

The House refused to concur in Senate amendments to **H.B. 573** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: D. Hudson, Chairman; Repp, Hightower, Hollowell and Shine.

The House refused to concur in Senate amendments to **H.B. 650** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Kubiak, Chairman; Smithee, Campbell, Patterson and Carter.

The House refused to concur in Senate amendments to **H.B. 784** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Blackwood, Chairman; Parker, Ceverha, Hunter and A. Hill.

The House refused to concur in Senate amendments to **H.B. 1036** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: C. Evans, Hackney, Yost, Criss and Agnich.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 923

Senator Harris called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 923** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 923** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chairman; Armbrister, Blake, Henderson and Sims.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1169

Senator Jones submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1169** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

JONES	GIBSON
EDWARDS	P. HILL
BARRIENTOS	GUERRERO
McFARLAND	LANEY
HARRIS	SUTTON
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MOTION TO PLACE HOUSE BILL 2331 ON SECOND READING

Senator Glasgow moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2331, Relating to the representation of the Texas Legislature before the courts of Texas or the United States.

The motion was lost by the following vote: Yeas 18, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Anderson, Blake, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, Lyon, McFarland, Parmer, Sarpalius, Sims.

Nays: Armbrister, Barrientos, Brooks, Johnson, Parker, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent: Montford, Tejeda.

HOUSE BILL 1299 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1299, Relating to the minimum staffing requirements of county jails.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 1299** as follows:

1. Add a new SECTION 2, which reads as stated below, and renumber the subsequent sections accordingly.

SECTION 2. Article 36.24, Code of Criminal Procedure, is amended to read as follows:

Art. 36.24. OFFICER SHALL ATTEND JURY. The sheriff of the county shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court. The court may request the sheriff to furnish the court with a particular person to serve as bailiff, and may at any time order the sheriff to remove a person serving as bailiff and furnish the court with another person to serve as bailiff. If the person furnished by the sheriff is to be called as a witness in the case he may not serve as bailiff.

2. Amend the caption to read as follows:
relating to certain actions by a sheriff.

The amendment was read and was adopted viva voce vote.

On motion of Senator Washington and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2328 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2328, Relating to grandparent possession of and access to natural and adoptive grandchildren.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend **H.B. 2328** as follows:

Insert the following new SECTIONS 4, 5, 6, 7, 8, 9 and 10, and renumber SECTION 4 as SECTION 11:

SECTION 4. Section 4.02, Family Code, is amended to read as follows:

Sec. 4.02. DUTY TO SUPPORT. Each spouse has the duty to support the other spouse, and each parent has the duty to support his or her child, during the period that the child is a minor, and thereafter so long as the child is fully enrolled in an accredited primary or secondary school in a program leading toward a high school diploma, until the end of the school year in which the child graduates. In addition, a grandparent may have a secondary duty to support a grandchild as provided by Section 12.041 of this code. A spouse or parent who fails to discharge the duty of support is liable to any person who provides necessaries to those to whom support is owed.

SECTION 5. Section 12.04, Family Code, is amended to read as follows:

Sec. 12.04. RIGHTS, PRIVILEGES, DUTIES, AND POWERS OF PARENT. Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child;

[and]

(10) the duty to support a grandchild as provided by Section 12.041 of this code; and

(11) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

SECTION 6. Chapter 12, Family Code, is amended by adding Section 12.041 to read as follows:

Sec. 12.041. DUTY TO SUPPORT GRANDCHILD. (a) A maternal grandparent and a paternal grandparent have a secondary duty to support a grandchild until the 18th birthday of the mother or the father, respectively, provided that the mother or father, or both, are unable to provide adequate support for the grandchild.

(b) Support of a grandchild under this section includes the provision of clothing, food, shelter, medical care, and education, and may include periodic court-ordered support payments.

SECTION 7. Section 14.05, Family Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A maternal grandparent or a paternal grandparent with a secondary duty to support a grandchild as provided by Section 12.041 of this code may be ordered to make periodic payments for the support of the grandchild or to provide in-kind support in accordance with Section 12.041 of this code.

(h) In determining the amount of support due under Section 12.041 of this code or to be ordered under this section, the court shall consider the equitable share of that support of each grandparent, taking into consideration the financial circumstances of all persons obligated to support the child.

SECTION 8. Section 14.08, Family Code, is amended by adding Subsection (h) to read as follows:

(h) For the purpose of Subsection (c)(2) of this section, the birth of a grandchild for whom an obligation of support is provided by Section 12.041 of this code constitutes a material and substantial change of circumstances.

SECTION 9. Section 25.05, Penal Code, is amended to read as follows:

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if he intentionally or knowingly fails to provide support [~~that he can provide and that he was legally obligated to provide~~] for his child [~~children~~] younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child [~~spouse who is in needy circumstances~~].

(b) [~~Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section.~~

[~~(c) For purposes of this section, "insufficient support" means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.~~

[~~(d)~~] For purposes of Subsection (a) of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged [~~admitted~~] by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) A [~~(c) Under this section, a~~] conviction under Subsection (a) of this section may be had on the uncorroborated testimony of a party to the offense [~~and a spouse shall be a competent witness~~].

(d) [~~(f)~~] It is an affirmative defense to prosecution under Subsection (a) of this section that the actor could not provide [~~the~~] support for his child [~~that he was legally obligated to provide~~].

(e) The [~~(g) During the~~] pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code[~~, the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings~~].

(f) [~~(h)~~] Except as provided in Subsection (g) [~~(i)~~] of this section, an offense under this section is a Class A misdemeanor.

(g) [~~(i)~~] An offense under Subsection (a) of this section is a felony of the third degree if the actor:

(1) has been convicted one or more times under this section; or

(2) commits the offense while residing in another state.

(h) An individual commits an offense under this section if he intentionally or knowingly fails to provide support for a grandchild that he is obligated to provide under Section 12.041, Family Code. An offense under this subsection is a Class A misdemeanor. The provisions of this section that enhance the offense to a third degree felony do not apply to an offense under this subsection.

SECTION 10. This Act takes effect immediately, except that Sections 4, 5, 6, 7, 8, and 9 take effect September 1, 1987.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2328 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2328** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MOTION TO PLACE HOUSE BILL 512 ON SECOND READING

Senator Armbrister moved to suspend the regular order of business to take up for consideration at this time:

H.B. 512, Relating to the offense of theft of service.

The motion was lost by the following vote: Yeas 11, Nays 15.

Yeas: Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Henderson, Jones, Krier, Lyon, Sims.

Nays: Anderson, Edwards, Glasgow, Green, Johnson, Leedom, McFarland, Parmer, Santiesteban, Sarpalius, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent: Farabee, Harris, Montford, Parker, Tejeda.

CONFERENCE COMMITTEE REPORT SENATE BILL 1191

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1191** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN	RILEY
ARMBRISTER	C. JOHNSON
SIMS	PERRY
McFARLAND	SAUNDERS
EDWARDS	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to appeal from an action taken pursuant to Section 26.177 of the Water Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.177 of the Water Code, as amended, is amended by adding Subsections (c) and (d) to read as follows:

(c) Any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits of such city adopted pursuant to this Section or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the Commission within sixty (60) days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient or ineffective in its attempt to control water quality. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdsiction so as not to delay any permit approvals.

(d) The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the Commission in administering this section.

SECTION 2. The importance of this legislation and the crowded conditions of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was again read and was again filed with the Secretary of the Senate.

HOUSE BILL 1078 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1078, Relating to representation of the state in a forfeiture case under the Texas Controlled Substances Act by an attorney for the seizing agency.

The bill was read second time.

Senator Green offered Floor Amendment No. 1 to the bill.

On motion of Senator Green and by unanimous consent, the amendment was withdrawn.

(Senator Brooks in Chair)

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1078** by striking Section 2 of the bill and substituting the following as Sections 2, 3, and 4:

SECTION 2. Section 5.08(f), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) All money, securities, certificates of deposit, negotiable instruments, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property and other things of value, and the proceeds from the sale of an item described in this subsection that are forfeited to the seizing agencies of the state or an agency or office of a political subdivision of the state authorized by law to employ peace officers shall be deposited in a special fund to be administered by the seizing agencies or office to which they are forfeited. Except as otherwise provided by this subsection, expenditures from this fund shall be used solely for the investigation of any alleged violations of the criminal laws of this state. The director of an agency of the state may use not more than 10 percent of the amount credited to the fund for the prevention of drug abuse and for treatment of persons with drug-related problems. The director of an agency or office of a political subdivision that has received funds under this section shall [~~comply with the request of the governing body of the political subdivision to~~] deposit not less [more] than 25 [~~10~~] percent of the amount credited to the fund into the treasury of the subdivision. The governing body of the subdivison shall use the funds received for the prevention of drug abuse and for the treatment of persons with drug-related problems, including the court-ordered treatment of drug-dependent persons. To be eligible to receive money under this section, a drug treatment program must be community-based and licensed by the Texas Commission on Alcohol and Drug Abuse under the Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes). Nothing in this subsection shall be construed to decrease the total salaries, expenses, and allowances which an agency or office is receiving from other sources at or from the time this subsection takes effect.

SECTION 3. This Act takes effect September 1, 1987, and Section 2 of this Act applies to the disposition of property or proceeds of property forfeited on or after that date. The disposition of property or proceeds of property forefeited before that date is covered by the law in effect on the date the property was forfeited, and the former law is continued in effect for this purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1078** by striking the following language on page 1, lines 10 and 11:

"verified answer within 20 days of the mailing or publication of notice of seizure."

The amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1078 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1078** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1512 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1512, Relating to the taking of acknowledgments or proofs of written instruments outside the United States and the recording of instruments acknowledged outside the United States.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Amend **H.B. 1512** by adding the following language as SECTION 3., and renumbering the following sections appropriately.

SECTION 3. Article 3945, Revised Statutes, is amended to read as follows:

Art. 3945. NOTARY PUBLIC. Notaries public may charge the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal $3.00
Each notice of protest ..... .50
Protesting in all other cases, for each 100 words ..... .50
Certificate and seal to such protest 3.00
Taking the acknowledgement or proof of any deed or other instrument in writing, for registration, including certificate and seal:
(1) for the first signature ..... 5.00 [~~3.00~~]
(2) for each additional signature 1.00
Administering an oath or affirmation with certificate and seal ..... 5.00 [~~3.00~~]
All certificates under seal not otherwise provided for ..... 5.00 [~~3.00~~]
Copies of all records and papers in their office, for each page ..... .50
All notarial acts not provided for ..... 5.00 [~~3.00~~]
Taking the depositions of witnesses, for each 100 words ..... .50
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition ..... 5.00 [~~3.00~~]

SECTION 4. Section 5(f), Article 5949, Revised Statutes, is amended to read as follows:

(f) "Good cause" includes [~~shall include~~] final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, the failure to comply with Subsection (b) or (c) of this section, [~~and~~] final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state, and the imposition on the Notary Public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a Notary Public.

SECTION 5. Section 9, Article 5949, Revised Statutes, is amended to read as follows:

9. PUBLIC RECORDS; INSPECTION. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the office of the Secretary of State [~~after any such Notary Public has qualified~~], and shall be open to inspection of any interested person as such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records [~~; but the Secretary of State is not required to furnish lists of the names of persons appointed before their qualification or lists of unreasonable numbers of qualified Notaries Public~~].

SECTION 6. Article 5955, Revised Statutes, is amended to read as follows:

Art. 5955. NOTARIES' RECORDS. Each notary public shall keep a well bound book, in which shall be entered the date of all instruments notarized by [~~acknowledged before~~] him, the date of such notarizations [~~acknowledgements~~], the name and signature of the grantor or maker, the place of his residence or alleged residence, whether personally known, identified by an identification card issued by a governmental agency or a passport issued by the United States, or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon.

SECTION 7. Article 5960(d), Revised Statutes, is amended to read as follows:

(d) The use by a [~~qualified~~] notary public qualified before September 1, 1985, of a seal that contains that words "Notary Public, State of Texas" or a "Notary Public" and the name of the county[~~; but does not also contain the name of the notary public and the expiration date of his commission;~~] does not invalidate an acknowledgement or a notary public's official act. If a notary public qualified before September 1, 1985, uses a seal [~~is used~~] that does not contain the notary public's name and the expiration date of his commission, the notary public shall print or stamp his name and the expiration date of his commission under his signature. The failure to print or stamp the name or expiration date does not invalidate an acknowledgment or a notary public's official act, but does subject a notary public to the possible suspension or revocation of his commission.

SECTION 8. Effective September 1, 1989, Article 5960(d), Revised Statutes, is repealed.

SECTION 9. Unless a different effective date is provided for a particular section, this Act takes effect September 1, 1987.

SECTION 10. Article 3945, Revised Statutes, and Section 4, Article 5949, Revised Statutes, as amended by this Act, apply to fees charged for notary services and for fees paid to the secretary of state by applicants for qualification as a notary public on or after the effective date of this Act. A fee for a service rendered before

the effective date of this Act or a fee for the qualification of a notary public before the effective date of this Act is covered by the law in existence at the time the service was rendered or the notary public was qualified, and that law is continued in effect for that purpose.

The amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1512 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1512** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT
SENATE BILL 417

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 417** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE	DUTTON
WASHINGTON	G. LUNA
HENDERSON	HURY
GREEN	A. MORENO
McFARLAND	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to maintaining a common or public nuisance by allowing the delivery or use of controlled substances on real property; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 125.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.001. COMMON NUISANCE. A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code or for the delivery or use of a controlled substance

in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) maintains a common nuisance.

SECTION 2. Section 125.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) A suit to enjoin and abate a common nuisance may be brought by an individual, by the attorney general, or by a district, county, or city attorney. The suit must be brought in the county in which it is alleged to exist against the person who is maintaining or about to maintain the nuisance. The suit must be brought in the name of the state if brought by the attorney general or a district or county attorney, in the name of the city if brought by a city attorney, or in the name of the individual if brought by a private citizen. Verification of the petition or proof of personal injury by the acts complained of need not be shown. For purposes of this subsection, personal injury may include economic or monetary loss. [~~If a county or district attorney or the attorney general has reliable information that a common nuisance exists, the county or district attorney or the attorney general shall sue the person maintaining the nuisance for an injunction to abate and enjoin the nuisance. The suit is in the name of the state and shall be filed in the county in which the nuisance is alleged to exist.~~]

(b) If judgment is in favor of the petitioner [state], the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance. The judgment must order that the place where the nuisance exists be closed for one year after the date of judgment unless the defendant or the real property owner, lessee, or tenant of the property posts bond.

(c) The bond must:

(1) be payable to the state at the county seat of the county in which the nuisance exists;

(2) be in the penal sum of $10,000 [~~not less than $1,000 nor more than $5,000~~];

(3) have sufficient sureties approved by the court; and

(4) be conditioned that the property will not be used or permitted to be used for prostitution or gambling in violation of the Penal Code or for delivery or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

SECTION 3. Section 125.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.003. SUIT ON BOND. (a) If a condition of a bond filed or an injunctive order entered under this subchapter is violated, the district, [~~or~~] county, or city attorney of the county in which the property is located shall sue on the bond in the name of the state. In that suit, the whole sum shall be forfeited [~~may be recovered~~] as a penalty. On violation of any condition of the bond or of the injunctive order and subsequent to forfeiture of the bond, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture.

(b) A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter. If an appeal is not taken by a party temporarily enjoined under this article, the party is entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(c) In an action brought under this chapter, the court may award a prevailing party reasonable attorney's fees in addition to costs. In determining the amount of attorney's fees, the court shall consider:

(1) the time and labor involved;
(2) the novelty and difficulty of the questions;
(3) the expertise, reputation, and ability of the attorney; and
(4) any other factor considered relevant by the court.

(d) Nothing herein is intended to allow a suit to enjoin and abate a common nuisance to be brought against any enterprise whose sole business is that of a bookstore or movie theater.

SECTION 4. Subsections (a) and (b), Section 125.004, Civil Practice and Remedies Code, are amended to read as follows:

(a) Proof that prostitution or gambling in violation of the Penal Code or that the delivery or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) is frequently committed at the place involved is prima facie evidence that the proprietor knowingly permitted the act.

(b) Evidence that persons have been convicted of gambling, [or] committing prostitution, or delivering or using a controlled substance in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

SECTION 5. Section 125.021, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.021. PUBLIC NUISANCE. The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

(1) gambling, gambling promotion, or communicating gambling information prohibited by law;
(2) promotion or aggravated promotion of prostitution;
(3) compelling prostitution;
(4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;
(5) commercial exhibition of live dances or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse; [or]
(6) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law; or
(7) delivering or using a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

SECTION 6. Section 125.022, Civil Practice and Remedies Code, is amended by adding Subsections (d) through (g) to read as follows:

(d) Service of any order, notice, process, motion, or ruling of the court on the attorney of record of a cause pending under this subchapter is sufficient service of the party represented by the attorney.

(e) A person who violates a temporary or permanent injunctive order under this subchapter is subject to the following sentences for civil contempt:
(1) a fine of not less than $1,000 nor more than $10,000;
(2) confinement in jail for a term of not less than 10 nor more than 30 days; or
(3) both fine and confinement.

(f) A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this

subchapter. If an appeal is not taken by a party temporarily enjoined under this subchapter, the party is entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(g) In an action brought under this chapter, the court may award a prevailing party reasonable attorney's fees in addition to his costs. In determining the amount of attorney's fees, the court shall consider:

(1) the time and labor involved;

(2) the novelty and difficulty of the questions;

(3) the expertise, reputation, and ability of the attorney; and

(4) any other factor considered relevant by the court.

SECTION 7. Chapter 125, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ADDITIONAL NUISANCE REMEDIES

Sec. 125.041. PUBLIC NUISANCE. For the purposes of this subchapter, a public nuisance is considered to exist at a place if one or more of the following acts occurs at that place on a regular basis:

(1) gambling, gambling promotion, or communication of gambling information, as prohibited by Chapter 47, Penal Code;

(2) promotion or aggravated promotion of prostitution, as prohibited by Chapter 43, Penal Code;

(3) compelling prostitution, as prohibited by Chapter 43, Penal Code;

(4) commercial manufacture, commercial distribution, or commercial exhibition of material that is obscene, as defined by Section 43.21, Penal Code;

(5) commercial exhibition of a live dance or other act in which a person engages in real or simulated sexual intercourse or deviate sexual intercourse, as defined by Section 43.01, Penal Code; or

(6) manufacture, delivery, or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

Sec. 125.042. REQUEST FOR MEETING. (a) The voters of an election precinct in which a public nuisance is alleged to exist or is alleged to be likely to be created, or the voters in an adjacent election precinct, may request the district attorney, city attorney, or county attorney having geographical jurisdiction of the place that is the subject of the voters' complaints to authorize a meeting at which interested persons may state their complaints about the matter. To be valid to begin proceedings under this section, the written request must be signed by at least:

(1) 10 percent of the registered voters of the election precinct in which the public nuisance is alleged to exist or is alleged to be likely to be created; or

(2) 20 percent of the voters of the adjacent election precinct.

(b) On receiving a written request for a meeting from the required number of persons, the district attorney, city attorney, or county attorney may appoint a person to conduct the meeting at a location as near as practical to the place that is the subject of the complaints.

Sec. 125.043. NOTICE. The district attorney, city attorney, or county attorney receiving the request may:

(1) post notice of the purpose, time, and place of the meeting at either the county courthouse of the county or the city hall of the city in which the place that is the subject of the complaints is located and publish the notice in a newspaper of general circulation published in that county or city; and

(2) serve the notice, by personal service, to the owner and the operator of the place.

Sec. 125.044. FINDINGS. (a) After the meeting, the person appointed to conduct the meeting shall report the findings to the district attorney, city attorney, or county attorney who appointed the person. The district attorney, city attorney, or county attorney, on finding by the attorney that a public nuisance exists or is likely to be created, may initiate appropriate available proceedings against the persons owning or operating the place at which the public nuisance exists or is likely to be created.

(b) In a proceeding begun under Subsection (a):

(1) proof that acts creating a public nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly permitted the acts; and

(2) evidence that persons have been convicted of offenses involving acts at the place that create a public nuisance is admissible to show knowledge on the part of the owner and the operator that the acts occurred.

(c) The originals or certified copies of the papers and judgments of the convictions described by Subdivision (2) of Subsection (b) are admissible in a suit for an injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

Sec. 125.045. REMEDIES. (a) If, in any judicial proceeding, a court determines that a person has maintained a place at which a public nuisance existed, the court shall require the person to execute a bond. The bond must:

(1) be payable to the state at the county seat of the county in which the nuisance existed;

(2) be in the amount set by the court, but not less than $5,000 or more than $10,000;

(3) have sufficient sureties approved by the court; and

(4) be conditioned that the person will not allow a public nuisance to exist at the place.

(b) If any party to a court case fails to cease and desist creating and maintaining a public nuisance within the time allowed by the court, a political subdivision may:

(1) discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;

(2) prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

(3) revoke the certificate of occupancy of the place;

(4) prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance; and

(5) use any other legal remedy available under the laws of the state.

SECTION 8. This Act applies only to actions brought on or after the effective date of this Act. Actions brought before the effective date of this Act are subject to the law as it existed at the time the petition for injunction was filed.

SECTION 9. This Act takes effect September 1, 1987.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2024 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2024, Relating to certain sales of homestead property.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2024** as follows:

(1) On page 1, line 21, strike "Any" and substitute "Except as provided by Subsection (c), any".

(2) On page 1, line 23, between "the" and "fair", insert "appraised".

(3) On page 1, between lines 36 and 37, insert the following:

(c) This section does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 2024** as follows:

1. Amend the caption to read as follows:

relating to certain sales and exemptions of certain real and personal property.

2. Renumber SECTION 4 and SECTION 5 as SECTION 6 and SECTION 7.

3. Add new SECTION 3, SECTION 4 and SECTION 5 to read as follows:

SECTION 3. Chapter 42, Property Code, is amended by adding Section 42.0011 to read as follows:

Sec. 42.0011. ADDITIONAL PERSONAL PROPERTY EXEMPTION. (a) In addition to the exemption provided by Section 42.001 of this code, there is exempt, as personal property, from attachment, execution, and seizure for the satisfaction of debts, payments to any beneficiary under a private pension plan to the extent that the payments satisfy the requirements of 11 U.S.C. Section 522(d)(10)(E).

(b) The exemption provided in this section does not apply to a debt that is secured by a lien on the property or that is due for rents or advances from a landlord to the landlord's tenant.

SECTION 4. This Act does not affect an exemption from execution provided by law for amounts paid under a public pension plan.

SECTION 5. The change in law made by this Act applies to a judgment on a debt rendered on or after the effective date of this Act. A judgment on a debt rendered before the effective date of this Act is covered by the law in effect when the judgment was rendered, and the former law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2024 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2024** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Green, Harris, Henderson, Johnson, Jones, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Glasgow, Krier, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 173 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 173, Relating to the offenses of abuse, sale, or delivery of certain volatile chemicals, to the offenses of abuse or delivery of certain glues and aerosol paints, to the offense of use or possession with intent to use inhalant paraphernalia, to inhalant abuse information, and to conduct indicating a need for supervision related to the abuse of those substances.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Amend **C.S.H.B. 173** by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 4(a) and (e), Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (d) of this section, a person commits an offense if the person intentionally, [~~or~~] knowingly, or recklessly sells or delivers a substance containing a volatile chemical to a person under 18 [~~17~~] years of age and the substance is subject to special labeling requirements concerning precautions

against inhalation established pursuant to the Federal Hazardous Substances Act, 15 U.S.C. 1261, et seq., as that law existed on January 1, 1985, and to the federal regulations promulgated pursuant to that Act (16 CFR 1500.14) and in effect on that date.

(e) An offense under this section is a Class B [C] misdemeanor.

SECTION 2. Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. INHALANT PARAPHERNALIA. (a) In this section, "inhalant paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in inhaling, ingesting, or otherwise introducing into the human body a substance containing a volatile chemical, and the term includes:

(1) a can, tube, or other container that was used as the original receptacle for a volatile chemical by the manufacturer or packager of the substance; or

(2) a can, tube, balloon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension a substance containing a volatile chemical.

(b) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, apply, use, or otherwise introduce into the human body a substance containing a volatile chemical in violation of Section 3 of this Act.

(c) An offense under this section is a Class B misdemeanor.

SECTION 3. Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. (a) A person commits an offense if he knowingly and intentionally manufactures, delivers, or possesses with intent to manufacture or deliver abusable glue or aerosol paint which does not contain additive material in accordance with rules promulgated by the commissioner.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under Subsection (a) of this section that the abusable glue or aerosol paint is packaged in bulk quantity containers each holding two gallons or more and is intended for ultimate use only by industrial or commercial enterprises.

(d) The commissioner shall promulgate rules approving and designating additive materials to be included in abusable glue and aerosol paint and prescribing the proportions of such materials to be placed in such abusable glue or aerosol paint; provided that the rules promulgated under this subsection shall be designed to safely and effectively discourage intentional abuse by inhalation of abusable glue or aerosol paint at the lowest practicable cost to the manufacturers and distributors of such abusable glue or aerosol paint.

(e) In this section, "glue" means an adhesive substance intended to be used to join two surfaces. "Aerosol paint" means aerosolized paint products, including clear or pigmented lacquers and finishes. "Abusable glue or aerosol paint" means glue or aerosol paint which is:

(1) packaged in a container holding a pint or less by volume or less than two pounds by weight; and

(2) labeled in accordance with the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Sections 1261 to 1274), and under regulations adopted under that Act (16 C.F.R. Part 1500 (1984)), as those regulations may be amended from time to time.

(f) A person commits an offense if he knowingly, [~~or~~] intentionally, or recklessly [:

[~~(1)~~] delivers abusable glue or aerosol paint to a person who is under 18 [~~17~~] years of age[~~; or~~

[~~(2) displays abusable glue or aerosol paint in a business establishment in a manner that makes the abusable glue or aerosol paint accessible to patrons of the business without assistance of personnel of the business~~].

(g) An offense under Subsection (f) of this section is a felony of the third degree except as provided by Subsection (h) or (i) of this section.

(h) An offense under Subsection (f) of this section is a Class B misdemeanor if it is shown on the trial of the offense that at the time of the delivery the person or his employer had a valid glue and paint sales permit for the location of the sale under Article 4476-15d, Revised Statutes.

(i) An offense under Subsection (f) of this section is a Class A misdemeanor if it is shown on the trial of the offense that at the time of the delivery the person or his employer:

(1) did not have a valid glue and paint sales permit but did have a valid sales tax permit for the location of the sale; and

(2) had not been previously convicted under this section for an offense committed after January 1, 1988 [~~Class B misdemeanor~~].

(j) [~~(h)~~] It is a defense to prosecution under Subsection (f) of this section that the abusable glue or aerosol paint which is delivered or displayed contains additive material which effectively discourages intentional abuse by inhalation or which is in compliance with rules promulgated by the commissioner pursuant to Subsection (d) of this section.

(k) [~~(i)~~] It is an affirmative defense to prosecution under [~~Subdivision (1) of~~] Subsection (f) of this section that the person making the delivery is an adult having supervisory responsibility over the person under 18 [~~17~~] years of age and:

(1) the adult permits the use of the abusable glue or aerosol paint only under his direct supervision and in his presence and only for its intended purpose; and

(2) the adult removes the substance from the person under 18 [~~17~~] years of age on completion of that use.

(l)[~~(j)~~] It is an affirmative defense to prosecution under Subsection (f) of this section that the person to whom the abusable glue or aerosol paint was delivered presented to the defendant an apparently valid Texas driver's license or an identification card, issued by the Department of Public Safety and containing a physical description consistent with the person's appearance, that purported to establish that the person was an individual 18 [~~17~~] years of age or older.

(m)[~~(j)~~] A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable glue or aerosol paint with intent to inhale, ingest, apply, or use the glue or paint in a manner designed to affect the actor's central nervous system, to create or induce a condition of intoxication, euphoria, hallucination, or elation, or to change, distort, or disturb the actor's eyesight, thinking process, balance, or coordination and in a manner contrary to directions for use, cautions, or warnings appearing on a label of a container of abusable glue or aerosol paint.

(n)[~~(k)~~] An offense under Subsection (m) [~~(j)~~] of this section is a Class B misdemeanor.

(o) A business establishment that sells abusable glue or aerosol paint at retail shall display a conspicuous sign in both English and Spanish which states the following:

It is unlawful for a person to sell or deliver abusable glue or aerosol paint to a person under 18 years of age. Except in limited situations, such an offense is a 3rd degree felony.

It is also unlawful for a person to abuse glue or aerosol paint by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use glue or aerosol paint in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

(p) A person commits an offense if the person sells abusable glue or aerosol paint in a business establishment and the person does not display a sign as required by Subsection (o) of this section. An offense under this subsection is a Class C misdemeanor.

(q) In this section, "inhalant paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable glue or aerosol paint in violation of Subsection (m) of this section, and the term includes:

(1) a can, tube, or other container used as the original receptacle for an abusable glue or aerosol paint; or

(2) a can, tube, ballon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension an abusable glue or aerosol paint, or vapors of the glue or paint.

(r) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable glue or aerosol paint in violation of Subsection (m) of this section.

(s) An offense under Subsection (r) of this section is a Class B misdemeanor.

SECTION 4. Title 71, Revised Statutes, is amended by adding Article 4476-15d to read as follows:

Art. 4476-15d. REGULATION OF SALE OF ABUSABLE GLUE AND AEROSOL PAINT

Sec. 1. DEFINITIONS. In this article:

(1) "Abusable glue" and "aerosol paint" have the meanings given those terms by Section 4.13(e), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(2) "Department" means the Texas Department of Health.

(3) "Glue and paint sales permit" means a permit issued under this article to sell at retail abusable glue or aerosol paint.

(4) "Permittee" means a person who has a valid glue and paint sales permit.

(5) "Seller" means any retail seller of abusable glue and aerosol paint.

Sec. 2. GLUE AND PAINT SALES PERMIT: ISSUANCE AND RENEWAL. (a) The department shall by rule develop procedures to allow eligible sellers to apply for and receive a glue and paint sales permit on an annual basis and to receive reasonable notification of permit expiration and renewal requirements by the department. The department shall:

(1) issue, deny, approve, or renew a glue and paint sales permit to an applicant or permittee; and

(2) adopt and revise rules as necessary to administer this article.

(b) To be eligible to be issued a glue and paint sales permit or to be issued a renewal of a glue and paint sales permit, an applicant or permittee must:

(1) have a valid sales tax permit issued to the applicant;

(2) complete and return to the department an application as required by the department; and

(3) pay an application fee to the department of $25 for each location at which abusable glue and aerosol paint may be sold by the applicant on obtaining a glue and paint permit.

(c) The department shall issue or deny the permit to the applicant or permittee and notify the applicant or permittee of the action of the department within 60 days after the date on which the department receives the application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit or a permit renewal issued under this article is valid for one year from the date that the permit or renewal is issued. A permit is valid only to the extent

that the permittee has not been convicted more than one time in the preceding year of an offense that is committed at the location for which the permit or renewal is issued and that is committed under Section 4(a), Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), or under Section 4.13 (a), (f), (m), or (r), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(e) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(f) A permittee must have the permit or a copy of the permit available for inspection by the public at the place where the permittee sells abusable glue and aerosol paint.

(g) The department shall prepare an annual roster of permittees and shall make the roster available to other state agencies and the general public on request, upon payment of a reasonable fee set by the department to cover the actual cost of reproducing the roster.

Sec. 3. FAILURE TO ISSUE OR RENEW PERMIT. Proceedings for failure to issue or renew, or for appeals from those proceedings are governed by the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of a proceeding is subject to the substantial evidence rule.

Sec. 4. OFFENSES. (a) A person may not sell abusable glue or aerosol paint at retail unless the person or his employer has a valid glue and paint sales permit for the location of the sale at the time of the sale.

(b) A person commits an offense if the person sells abusable glue or aerosol paint at retail to a purchaser who is 18 years of age or older and the person or his employer does not have a valid glue and paint sales permit for the location of the sale at the time of sale.

(c) An offense under Subsection (b) of this section is a Class B misdemeanor.

Sec. 5. REVENUE, RECEIPTS, AND DISBURSEMENTS. The department shall receive and account for all funds received under this article and forward the funds as they are received to the comptroller of public accounts. The comptroller of public accounts shall deposit these funds in the general revenue fund to be used for the purposes of covering the costs of administering this article and to finance education projects concerning the hazards of abusable glue and aerosol paint and prevention of inhalant abuse. The department shall enter into a memorandum of understanding with the Texas Commission on Alcohol and Drug Abuse for the implementation of such education and prevention programs.

SECTION 5. Not later than October 1, 1987, the speaker of the house of representatives shall appoint three persons and the lieutenant governor shall appoint three persons who have experience in dealing with the problem of inhalant abuse or the manufacture or marketing of aerosol paint, abusable glue, or volatile chemicals to serve on a Special Inhalant Abuse Committee. Members of the committee shall serve two-year terms and shall serve without compensation. The committee shall meet not less than four times annually to monitor and evaluate the effect of this Act in curbing the problem of inhalant abuse. The committee shall report its findings and make recommendations based on its findings to the 71st Legislature not later than February 15, 1989.

SECTION 6. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 1988.

(b) A seller required by Article 4476-15d, Revised Statutes, as added by this Act, to have a glue and paint sales permit is not required to have the permit until January 1, 1988, or the 90th day after the date that the department adopts procedures to implement Article 4476-15d, Revised Statutes, as added by this Act, whichever is later. Sections 4.13(g), (h), and (i), Texas Controlled Substances Act

(Article 4476-15, Vernon's Texas Civil Statutes), as amended and added by this Act, are not effective until the date on which a seller is required to have a permit under this subsection.

(c) The Texas Department of Health shall develop the procedures necessary to implement Article 4476-15d, Revised Statutes, as added by this Act, not later than October 1, 1987.

SECTION 7. (a) The changes made by Sections 1-3 of this Act apply to conduct engaged in or an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed or conduct is engaged in before the effective date of this Act if any element of the offense or the conduct occurs before the effective date.

(b) Conduct engaged in or an offense committed before the effective date of this Act is covered by the law in effect when the conduct was engaged in or the offense was committed, and the former law is continued in effect for this purpose.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 173 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 173** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 817 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 817, Relating to the authorization of certain persons who train animals and develop equipment to detect controlled substances or marihuana to obtain, possess, and use controlled substances or marihuana.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 817 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 817** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 947 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 947, Relating to the authority of the Texas Board of Corrections and the Board of Pardons and Paroles to lease certain facilities from the federal government.

. The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Amend **H.B. 947** by adding subsection (e) to Article 6166g-3 to read as follows:

(e) Facilities leased under this article by the Texas Board of Corrections shall comply with federal constitutional standards and applicable court orders.

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 947 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 947** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1219 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1219, Relating to the authority of a judge to call a Court of Inquiry and to the organization and functions of the Court of Inquiry.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 1219** as follows: 1. Strike SECTION Two and renumber SECTION Three and SECTION Four as SECTION Four and SECTION Five, respectively.
2. Add new SECTIONS Two and SECTION Three as follows:
3. Amend the caption as follows:

Relating to the calling of a Court of Inquiry and Proceedings dealing with the grand juries.

SECTION 2. Articles 20.03, 20.04, 20.05, 20.09, 20.10, 20.11, 20.17, and 21.14, Code of Criminal Procedure, are amended to read as follows:

Art. 20.03. ATTORNEY REPRESENTING STATE ENTITLED TO APPEAR. (a) "The attorney representing the State" means the Attorney General, district attorney, criminal district attorney, or county attorney. The attorney

representing the State, is entitled to go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same.

(b) The attorney representing the State shall not divulge any evidence presented before the grand jury, except as may be necessary in the performance of his official duties or in the course of the investigation or prosecution of criminal offenses.

Art. 20.04. ATTORNEY SHALL [~~MAY~~] EXAMINE WITNESSES. The attorney representing the State shall [~~may~~] examine the witnesses before the grand jury and shall [~~may~~] advise as to the proper mode of interrogating them. No person other than the attorney representing the State or a grand juror may question a witness before the grand jury. No person may address the grand jury about a matter before the grand jury other than the attorney representing the State, a witness, or the accused or suspected person.

Art. 20.05. MAY SEND FOR ATTORNEY. The grand jury may send for the [~~State's~~] attorney representing the state and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties.

Art. 20.09. DUTIES OF GRAND JURY. The grand jury shall inquire into all offenses liable to indictment of which [~~any member may have knowledge, or of which~~] they shall be informed by the attorney representing the State[~~, or any other credible person~~].

Art. 20.10. ATTORNEY [~~OR FOREMAN~~] MAY ISSUE PROCESS. (a) The attorney representing the state[~~, or the foreman~~], in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before the grand jury [~~them~~] at a time fixed, or forthwith, without stating the matter under investigation. At each session the attorney representing the state shall inform the grand jurors of all subpoenas issued since the end of the preceding session and shall make available for inspection by the grand jurors all items returned under those subpoenas.

(b) The foreman may upon written application to the attorney representing the state, request a subpoena or an attachment be issued to any county in the state for a witness. Upon refusal of the attorney representing the state to issue such subpoena or attachment, the foreman may appeal in writing directly to the district court, requesting the issuance of such subpoena or attachment. The court may grant or deny the request.

Art. 20.11. OUT-OF-COUNTY WITNESSES

Sec. 1. The [~~foreman or the~~] attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause a subpoena or an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as the [~~such foreman or~~] attorney may desire. The subpoena may require the witness to appear and produce records and documents. An attachment shall command the sheriff or any constable of the county where the witness resides to serve the witness, and have him before the grand jury at the time and place specified in the writ.

Sec. 2. A subpoena or attachment issued pursuant to this article shall be served and returned in the manner prescribed in Chapter 24 of this code.

A witness subpoenaed pursuant to this article shall be compensated as provided in this code.

Art. 20.17. HOW SUSPECT OR ACCUSED QUESTIONED. (a) The grand jury, in propounding questions to the person accused or suspected, shall first state the offense with which he is suspected or accused, the county where the offense is said to have been committed and as nearly as may be, the time of commission of the offense, and shall direct the examination to the offense under investigation.

(b) Prior to any questioning of an accused or suspected person who is subpoenaed to appear before the grand jury, the accused or suspected person shall be furnished a written copy of the warnings contained in Subsection (c) of this article and shall be given a reasonable opportunity to retain counsel or apply to the court for an appointed attorney and to consult with counsel prior to appearing before the grand jury.

(c) If an accused or suspected person is subpoenaed to appear before a grand jury prior to any questions before the grand jury, the person accused or suspected shall be orally warned as follows:

(1) "Your testimony before this grand jury is under oath";

(2) "Any material question that is answered falsely before this grand jury subjects you to being prosecuted for aggravated perjury";

(3) "You have the right to refuse to make answers to any question, the answer to which would incriminate you in any matter";

(4) "You have the right to have a lawyer present outside this chamber to advise you before making answers to questions you feel might incriminate you";

(5) "Any testimony you give may be used against you at any subsequent proceeding";

(6) "If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you before making an answer to a question, the answer to which you feel might incriminate you."

Art. 21.14. PERJURY AND AGGRAVATED PERJURY. (a) An indictment for perjury or aggravated perjury need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or public servant by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury is assigned.

(b) If an individual is charged with aggravated perjury before a grand jury, the indictment may not be entered by the grand jury before which the false statement was alleged to have been made.

SECTION 3. The change in law made by this Act applies only to a grand jury proceeding to a Court of Inquiry Commenced on or after the effective date of this Act. A grand jury proceeding or Court of Inquiry that occurs before the effective date of this Act is covered by the law in effect when the proceeding occurs, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect September 1, 1987.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1219 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1219** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 967 ON SECOND READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 967, Relating to the commitment of drug dependent persons.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Amend **H.B. 967** by striking Section 4 in its entirety and substituting a new Section 4 as follows, renumbering subsequent sections as necessary:

SECTION 4. Subsections (a) and (g), Section 35.03, Family Code, are amended to read as follows:

(a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

(1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health and including all diseases within the scope by law or regulation of Section 1.03, Article 4445d, Vernon's Texas Civil Statutes;

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for chemical [~~drug~~] addiction, chemical [~~drug~~] dependency, or any other condition directly related to chemical [~~drug~~] use.

(g) A minor may consent to counseling or counseling in conjunction with treatment by a physician, psychologist, counselor, or social worker licensed or certified by this state, within the scope of the professional's license, if the [~~minor consents to~~] treatment and/or counseling is for sexual abuse, physical abuse, [~~or~~] suicide prevention, or chemical addiction, dependency, or abuse.

(1) Except as provided in Subsection (4) of this subsection, a physician, psychologist, counselor, or social worker licensed or certified by this state having reasonable grounds to believe that a child has been sexually or physically abused and/or is contemplating suicide and/or is involved in chemical addiction,

dependency, or abuse may counsel the child without consent of the child's parents, managing conservator, or guardian.

(2) A physician, psychologist, counselor, or social worker licensed or certified by this state may, with or without the consent of a minor who is a client, advise the parents, managing conservator, or guardian of the minor of the treatment given or needed by the minor.

(3) A physician, psychologist, counselor, or social worker licensed or certified by this state may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his or her own treatment under this section.

(4) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker licensed or certified by this state may not counsel a child if consent is refused by an order of a court.

(5) A physician, psychologist, counselor, or social worker licensed or certified by this state and counseling a child under the authority of this section is not liable for damages except those damages resulting from his or her negligence or wilful misconduct.

(6) A parent, managing conservator, or guardian is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under Subsection (g) of this section without the prior consent of the parent, managing conservator, or guardian.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 967 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 967** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE RULE 74a SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to **S.B. 696**.

SENATE BILL 696 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 696** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Givens

Amend **S.B. 696** by adding a new Section 2 as follows and renumbering appropriately:

SECTION 2. Section 21.204(a), Education Code, is amended to read as follows:

Section 21.204. NOTICE. (a) In the event the board of trustees receives a recommendation for nonrenewal, the board, after consideration of the written

evaluations required by Section 21.202 of this subchapter and the reasons for the recommendation, shall, in its sole discretion, either reject the recommendation or shall give the teacher written notice of the proposed nonrenewal on or before May [~~April~~] 1 preceding the end of the employment term fixed in the contract.

The amendment was read.

Senator Caperton moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 696** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Brooks, Edwards, Krier and Uribe.

COMMITTEE SUBSTITUTE HOUSE BILL 2146 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2146, Relating to the testimony of a child who is a victim of an offense.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2146** between lines 46 and 47 by adding new Sections 2, 3, 4 and 5 as follows and renumbering current Section 2 as Section 6:

SECTION 2. Chapter 22, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. OUTCRY STATEMENTS OF CHILD ABUSE VICTIMS

Sec. 22.021. OUTCRY STATEMENT OF CHILD ABUSE VICTIM. (a) This section applies to a hearing in any civil case, including a hearing under the Family Code, in which an issue in the hearing is the abuse of a child under 13 years of age.

(b) This section applies only to statements that describe the alleged incident that:

(1) were made by the child who is the alleged victim of the incident; and

(2) were made to the first person, 18 years of age or older, other than the person accused of the abuse, to whom the child made the statement about the incident.

(c) A statement that meets the requirements of Subsection (b) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court or in any other manner provided by law.

SECTION 3. Section 14(a), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Except as otherwise provided by Section 14b of this Act, the [~~The~~] rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably suspectible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

SECTION 4. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended by adding Section 14b to read as follows:

Sec. 14b. OUTCRY STATEMENT OF CHILD ABUSE VICTIM. (a) This section applies to a proceeding held under this Act or to a judicial review of a final decision under this Act in which an issue in the proceeding or review is the abuse of a child under 13 years of age.

(b) This section applies only to statements that describe the alleged incident that:

(1) were made by the child who is the alleged victim of the incident; and

(2) were made to the first person, 18 years of age or older, other than the person accused of abuse, to whom the child made a statement about the incident.

(c) A statement that meets the requirements of Subsection (b) of this section is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding or hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the court or entity conducting the proceeding finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court or at the proceeding or in any other manner provided by law.

SECTION 5. Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g) Section 14b of this Act applies to each judicial review under this Act whether by trial de novo or under the substantial evidence rule.

The amendment was read and was adopted viva voce vote.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2146** by striking the following language from lines 37 and 38:

"by viewing the testimony from the courtroom,"

Amend **C.S.H.B. 2146** by striking the following language from line 46:

"(b) The testimony of the child may be recorded during the"

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2146 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2146** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 1261** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Criss, Chairman; Shaw, Wallace, Uher and Melton.

The House refused to concur in Senate amendments to **H.B. 538** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Richardson, Chairman; Smithee, Collazo, Haley and Roberts.

The House refused to concur in Senate amendments to **H.B. 1196** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Valigura, Chairman; Patronella, Dutton, Betts and Danburg.

The House refused to concur in Senate amendments to **H.B. 1226** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Williamson, Chairman; Aikin, Garcia, Uher and Shaw.

The House refused to concur in Senate amendments to **H.B. 1373** and has requested the appointment of Conference Committee to consider the differences

between the two Houses: Harrison, Chairman; Waterfield, Robinson, Edge and Carriker.

The House refused to concur in Senate amendments to **H.B. 1652** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Millsap, Chairman; C. Evans, Cain, Hury and Patronella.

The House refused to concur in Senate amendments to **H.B. 1848** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Colbert, Chairman; Wallace, Glossbrenner, Culberson, Martinez.

The House refused to concur in Senate amendments to **H.B. 1947** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Robnett, Chairman; Gibson, Clark, Larry and Marchant.

The House refused to concur in Senate amendments to **H.B. 1869** and has requested the appointment of Conference Committee to consider the differences between the two Houses: Valigura, Chairman; J. Harris, Hammond, McKinney and Colbert.

The House refused to concur in Senate amendments to **H.B. 2597** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Colbert, Chairman; Culberson, R. Cuellar, Sutton and Wright.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 2056 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2056, Relating to the practices and procedures of the Antiquities Committee.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2056** by striking Section 2 in its entirety and replacing it with the following:

SECTION 2. Section 191.011 (a), Natural Resources Code, is amended to read as follows:

(a) There is created an Antiquities Committee, which is composed of nine members, including the Chairman of the Texas Historical Commission, the Director of the Parks and Wildlife Department, the Commissioner of the General Land Office, the State Archeologist, the State Engineer-Director of the State Department of Highways and Public Transportation, the Executive Director of the Texas Water Commission, and the following citizen members: one professional archeologist from a recognized museum or institution of higher learning in Texas, one professional historian with expertise in Texas history and culture, and one

professional museum director of a major, state-funded museum that has significant research facilities.

Five members represent a quorum. At no time shall any member be allowed to appoint or designate a proxy or representative for the purposes of achieving a quorum or to cast a vote on any matter pending before the Committee.

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 2056**, Section 10, by adding subsection (e) to Section 191.092 to read as follows:

(e) The committee shall consider any and all fiscal impacts on local political subdivisions before any structure or building owned by a local political subdivision may be designated as a state archeological landmark.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 2056** by adding a new SECTION 16 through 41 to read as follows and renumbering all subsequent SECTIONS accordingly:

SECTION 16. Subsections (f) and (g), Section 34.0511, Natural Resources Code, are amended to read as follows:

(f) At any time during the 120-day period a mineral owner may waive his preferential right to lease by providing the General Land Office with a written waiver. Failure by the mineral owner to exercise his preferential right to lease the land within the 120-day period provided by Subsection (c)(2) of this section, or the filing of a written waiver, results in forfeiture of the preferential right to lease the land.

(g) If a [the] mineral owner's [~~owner fails to exercise his~~] preferential right is forfeited under [~~within the 120-day period provided by Subsection (c)(2) of~~] this section, the land may be offered for lease by the board directly to an applicant or by sealed bid as provided by this chapter. The board shall not offer nor accept a price or terms which are less than that offered to the adjoining mineral owner under this section. If not leased at a public offering within 18 months from the date the lease was offered to the adjoining mineral owner, it shall be reoffered to the mineral owner prior to public offering in accordance with the provisions of this section.

SECTION 17. Section 51.128, Natural Resources Code, is amended to read as follows:

Sec. 51.128. CANCELLATION OF LEASE. (a) If a lessee fails to pay rent within 15 days after it is due, the lessee shall owe a penalty of 10% of the amount due.

(b) If a lessee fails to pay the [~~annual~~] rent within 60 days after it is due, the commissioner shall cancel the lease in writing [~~with a written document signed by him with his seal attached~~].

(c) [~~(b)~~] The commissioner shall file the written notice of cancellation [~~document~~] with the other papers relating to the lease, and the lease shall terminate immediately.

SECTION 18. Section 52.024, Natural Resources Code, is amended to read as follows:

Sec. 52.024. LEASE PROVISIONS FOR SHUT-IN OIL OR GAS ROYALTY AND COMPENSATORY ROYALTY. Each lease shall provide that:

(1) if at the expiration of the primary term or at any time after the expiration of the primary term a well or wells capable of producing oil or gas in paying quantities are located on the leased premises but oil or gas is not being produced for lack of suitable production facilities or a suitable market and the lease is not being maintained in force and effect, then [~~before the expiration of the primary term or if the primary term has expired, within 60 days after the lessee ceases to produce oil or gas from the well,~~] the lessee may pay as a shut-in oil or gas royalty an amount equal to double the annual rental provided in the lease but not less than $1,200 a year for each well capable of producing oil or gas in paying quantities. Any shut-in oil or gas royalty must be paid on or before: (1) the expiration of the primary term, (2) 60 days after the lessee ceases to produce oil or gas from the leased premises, or (3) 60 days after lessee completes a drilling and reworking operation in accordance with the lease provisions; whichever date is later;

(2) if the shut-in oil or gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased and after that if no suitable production facilities or suitable market for the oil or gas exists, the lessee may extend the lease for four additional and successive periods of one year by paying the same amount each year on or before the expiration of the extended term;

(3) if, during the period the lease is kept in effect by payment of the shut-in oil or gas royalty, oil or gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir or in any case in which drainage is occurring, the right to continue to extend the lease by paying the shut-in oil or gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid and for four additional and successive periods of one year each [~~an additional period of not more than five years from the expiration of the primary term~~] by the lessee paying compensatory royalty at the royalty rate provided in the lease of the value at the well of production from the well which is causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;

(4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month next succeeding the month in which the oil or gas is sold and delivered from the well located within 1,000 feet of or draining the leased premises and completed in the same reservoir;

(5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in oil or gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and

(6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code; however, at the determination of the commissioner and with his written approval, the payment of compensatory royalties shall satisfy the obligation to drill offset wells.

SECTION 19. Subsection (d), Section 52.026, Natural Resources Code, is amended to read as follows:

(d) Every [~~The~~] transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the state by [of] the original lessee or any prior transferee of the lease, including any liabilities to the state for unpaid royalties.

SECTION 20. Subsection (c), Section 52.028, Natural Resources Code, is amended to read as follows:

(c) The lessee shall pay all annual delay rentals and any royalties that accrue during the period of litigation in the same manner as they are to be paid under the

lease during the [~~period of an extended~~] primary term. If such delay rentals are not paid as the lease requires, the lease shall not automatically terminate; however, the delay rentals continue to be an obligation and debt owed by the lessee. The delay rentals paid during the period of litigation shall be held and returned to the lessee if the state is unsuccessful in the litigation.

SECTION 21. Subsections (c) and (d), Section 52.0301, Natural Resources Code, are amended to read as follows:

(c) [~~After the board enters an order in its minutes stating that the cause for suspension has ceased to exist, the oil and gas lease shall remain in status quo, and all obligations and conditions existing under the lease or any of those obligations or conditions that are suspended by the board are inoperative and of no force and effect except for the obligation to pay delay rentals.~~]

[~~(d)~~] After the board enters an [~~its~~] order in its minutes stating that the cause for suspension has ceased to exist, the oil and gas lease shall again become operative if the rental payments have been made during the period of suspension, and all suspended obligations and conditions[~~, including the payment of rentals,~~] shall again attach and be in force[~~. In the case of the suspension of the primary and principal terms of the lease, the lease shall continue in force~~] for a period equivalent to the unexpired term of the lease [~~on the date the cause of suspension began~~].

SECTION 22. Section 52.034, Natural Resources Code, is amended to read as follows:

Sec. 52.034. OFFSET WELLS. (a) If oil or gas is produced in commercial quantities from a well located on a privately owned area or areas of state land leased at a lesser royalty and the well is located within 1,000 feet of an area leased under this subchapter, or in any case where such an area is being drained by such a well or wells, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production from the draining well or the well located within 1,000 feet of the leased state area [~~on the privately owned area~~].

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by Subsection (a) of this section. Such compensatory royalty shall be paid at the royalty rate provided by the state lease issued under this subchapter and shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the leased area.

SECTION 23. Subsection (a), Section 52.131, Natural Resources Code, is amended to read as follows:

(a) Royalties due under a lease of state land or minerals that are required to be paid to the land office, including leases on land on which a free royalty is reserved pursuant to Section 51.201 or 51.054 of this title, shall be due and shall be paid as provided in this section.

SECTION 24. Subsection (b), Section 52.131, Natural Resources Code, is amended to read as follows:

(b) The commissioner shall by rule set the date for making royalty payments and for filing any reports, documents or other records required to be filed by the commissioner. However, the commissioner may not set the due date for [~~Royalty~~] royalty on oil [~~is due and payable on or~~] before the 5th day of the second month succeeding the month of production and may not set the due date for royalty on gas [~~is due and payable on or~~] before the 15th day of the second month succeeding the month of production.

SECTION 25. Subsection (b), Section 52.137, Natural Resources Code, is amended to read as follows:

(b) The commissioner, upon receipt of such payment made under protest as authorized by this section, shall send to the state treasurer the payment and a written statement that the payment was made under protest. Immediately upon receipt, the comptroller and treasurer shall:

(1) place the payment in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest;

(2) allocate the interest earned on these funds; [~~and~~]

(3) credit the amount allocated to an account established for this purpose until the status of the protest [~~funds~~] is finally determined; and

(4) upon final determination that some or all of the protested funds belong to the state, deposit the principal and the allocated interest to the proper funds as provided by law. All protest payments finally determined to belong to the permanent school fund shall be deposited to that fund upon such determination, and interest earned and allocated on those funds shall be deposited to the available school fund.

SECTION 26. Chapter 52, Subchapter D, Natural Resources Code, is amended by adding Section 52.139 to read as follows:

Section 52.139. LIMITATIONS ON AUDITS ASSESSMENTS. (a) If an audit billing notice has been issued under Section 52.135 and any outstanding audit deficiency assessment has been paid either,

(1) voluntarily; or

(2) after a hearing was requested and the commissioner has entered a final non-appealable order concerning the assessment; or

(3) after a final non-appealable judgment has been rendered by a court after payment of an audit assessment under protest and filing of a suit for refund under Section 52.137, then the commissioner may not issue another deficiency assessment which covers the same issues, time periods and leases as those covered by the previous assessment.

(b) If the commissioner audits a lessee's books and records under Section 52.135 the commissioner shall notify the lessee upon completion of his findings. If the commissioner notifies the lessee that no additional royalties are due, the commissioner may not again audit the books and records covering the same issues, time periods and leases involved in the first audit.

(c) This section shall not preclude the commissioner from conducting subsequent audits or examinations covering the same issues, time periods and leases in cases where fraud exists or where the first audit deficiency assessment results only from an examination of documents, records or reports submitted to the commissioner and not from a complete audit of the books, accounts, reports, or other records of a lessee.

SECTION 27. Chapter 52, Subchapter D, Natural Resources Code, is amended by adding Section 52.140 to read as follows:

Sec. 52.140. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in Section 52.135, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential in this section shall not be subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding in which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by the provisions of this section and contracts made confidential by

Section 52.134 to enforce any provisions of this chapter or may authorize their use in judicial or administrative proceedings in which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information which is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 or the release of other information which would have been properly included in reports required under Section 52.131 of this chapter.

SECTION 28. Subsection (a), Section 52.151, Natural Resources Code, is amended to read as follows:

(a) The commissioner on behalf of the state or any fund that belongs to the state may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements (1) the royalty interests in oil or gas or both reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

SECTION 29. Section 52.152, Natural Resources Code, is amended to read as follows:

Sec. 52.152. APPROVAL OF UNIT AGREEMENTS. (a) An agreement that (1) commits the royalty interest in land belonging to the permanent school fund or the asylum funds in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code must be approved by the board and executed by the owner of the soil if the agreement covers land leased for oil and gas under Subchapter F of this chapter.

(b) An agreement that commits the royalty interest in any land or an area not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas.

SECTION 30. Section 52.173, Natural Resources Code, is amended to read as follows:

Sec. 52.173. OFFSET WELLS. (a) If oil and/or gas should be produced [~~discovered~~] in commercial quantities [~~on lands not included in this law and~~] within 1,000 feet of [~~and draining~~] land subject to this subchapter [~~that is so included~~], or in any case where land subject to this subchapter [~~so included in this law~~] is being drained by production of oil or gas [~~from land not so included~~], the owner, lessee, sublessee, receiver, or other agent in control of land subject to this subchapter [~~included herein~~] shall in good faith begin the drilling of a well or wells upon such state land within 100 days after the draining [~~such~~] well or wells or the well or wells completed within 1,000 feet of the state land [~~on lands not so included~~] commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably develop the state land [~~included hereunder~~] and to protect such state land against drainage [~~by wells on other lands in the locality~~].

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state land.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells. Such compensatory royalty shall be paid at a royalty rate established by the commissioner if the land is unleased, or at the royalty rate provided by the state lease, if the land is leased. Such compensatory royalty shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the state land.

SECTION 31. Section 52.187, Natural Resources Code, as added by Section 1, Chapter 652, is amended by adding Subsection (d) to read as follows:

(d) A penalty of 10% shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this act. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10% penalty imposed by this subsection.

SECTION 32. Subsection (a), Section 53.155, Natural Resources Code, is amended to read as follows:

(a) Leases issued under Subchapter B or E of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

SECTION 33. Section 101.051, Natural Resources Code, is amended to read as follows:

Sec. 101.051. AUTHORITY OF COMMISSIONER OF GENERAL LAND OFFICE. Subject to the approval specified in Section 101.052 of this code, the Commissioner of the General Land Office, on [in] behalf of the State of Texas or of any fund belonging to the state, may execute contracts committing to the agreements declared lawful by the provisions of this chapter (1) the royalty interests in oil or gas or both reserved to the state, or any fund of the state, by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency, or authority of the state or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

SECTION 34. Section 101.052, Natural Resources Code, is amended to read as follows:

Sec. 101.052. NECESSARY APPROVAL BY OTHER PERSONS AND STATE AGENCIES. (a) An agreement that commits (1) the royalty interests in land set apart by the constitution and laws of this state for the permanent free school fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code must be approved by the School Land Board.

(b) An agreement that covers land leased for oil and gas under the Relinquishment Act, codified as Subchapter F in Chapter 52 of this code, must be executed by the owners of the soil.

(c) An agreement that commits the royalty interests in land or areas other than those covered by Subsections (a) and (b) of this section must be approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of the land or areas for oil and gas.

SECTION 35. Subsections (b) and (c), Section 85.65, Education Code, are amended to read as follows:

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office as prescribed by rule [~~within 100 days from the date of the first acknowledgment thereof~~], accompanied by 10 cents per acre for each acre assigned and the filing fee as prescribed by rule. An assignment shall not be effective unless filed as required by rule[~~, and if not so filed and payment made, the assignment shall not be effective~~]. An assignment shall not relieve the assignor of any liabilities or obligations incurred prior to the assignment.

(c) All rights to all or any part of a leased tract [~~any whole tract or to any assigned portion thereof~~] may be released [~~relinquished~~] to the state at any time by recording a release instrument [~~having an instrument of relinquishment recorded~~] in the county or counties in which the tract is located. Releases must also be [~~area may be situated, and~~] filed with the chairman of the board and the general land office, accompanied by the filing fee prescribed by rule. A release [~~$1 for each area assigned; but such assignment~~] shall not relieve the owner of any [~~past-due~~] obligations or liabilities incurred prior to the release [~~theretofore accrued thereon~~].

SECTION 36. Subsections (b) and (c), Section 104.84, Education Code, are amended to read as follows:

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office as prescribed by rule [~~within 100 days from the date of the first acknowledgment thereof~~], accompanied by 10 cents per acre for each acre assigned and the filing fee as prescribed by rule. An [~~The~~] assignment shall not be effective unless [~~it is~~] filed as required by rule [~~and the payment made~~].

(c) All rights to all or any part of a leased tract [~~any whole tract or to any assigned portion thereof~~] may be released [~~relinquished~~] to the state at any time by recording a release instrument [~~having an instrument of relinquishment recorded~~] in the county or counties in which the tract [~~area~~] is located [~~situated~~]. Releases [~~The instrument of relinquishment~~] shall also be filed with the chairman of the board and the general land office, accompanied by the filing fee prescribed by rule [~~$1 for each area assigned~~]. A release [~~The assignment~~] shall not relieve the owner of any [~~past-due~~] obligations or liabilities incurred prior to the release [~~accrued on the lease~~].

SECTION 37. Subsections (b) and (c), Section 109.74, Education Code, are amended to read as follows:

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office as prescribed by rule [~~within 100 days from the date of the first acknowledgment thereof~~], accompanied by 10 cents per acre for each acre assigned and the filing fee as prescribed by rule. An [~~The~~] assignment shall not be effective unless [~~it is~~] filed as required by rule [~~and the payment made~~].

(c) All rights to all or any part of a leased tract [~~any whole tract or to any assigned portion thereof~~] may be released [~~relinquished~~] to the state at any time by recording a release instrument [~~having an instrument of relinquishment recorded~~] in the county or counties in which the tract [~~area~~] is located [~~situated~~]. Releases [~~The instrument of relinquishment~~] shall also be filed with the chairman of the board and the general land office, accompanied by the filing fee prescribed by rule [~~$1 for each area assigned~~]. A release [~~The assignment~~] shall not relieve the owner of any [~~past-due~~] obligations or liabilities incurred prior to the release [~~accrued on the lease~~].

SECTION 38. Subsection (e), Section 66.68, Education Code, is amended to read as follows:

(e) Each lease shall provide that if at the expiration of the primary term or at any time thereafter there is located on the leased premises a well or wells capable of producing oil or gas in paying quantities and such oil or gas is not produced for

lack of suitable production facilities or a suitable market and such lease is not being other wise maintained in force and effect, the lessee may pay as royalty $1,200 per annum for each well on the lease capable of producing oil or gas in paying quantities, such payment to be made to the Board of Regents of The University of Texas System at Austin, Texas.[;] Any shut-in oil or gas royalty must be paid on or before: (1) [~~prior to~~] the expiration of the primary term of the lease, (2) [~~or if the primary term has expired, within~~] 60 days after lessee ceases to produce oil or gas from the leased premises, [~~such well or wells;~~] or (3) 60 days after lessee completes a drilling and reworking operation in accordance with the lease provisions, whichever date is later. [~~and~~] If [~~if~~] such payment is made, the lease shall be considered to be a producing lease and such shut-in [~~gas well~~] royalty payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased; and thereafter if no suitable production facilities or suitable market for such oil or gas exists, the lessee may extend the lease for four [~~two~~] additional and successive periods of one year each by the payment of a like sum of money each year on or before the expiration of the extended term. Provided, however, that if, while such lease is being maintained in force and effect by payment of such shut-in [~~gas well~~] royalty, oil or gas should be sold and delivered in paying quantities from a well situated within 1,000 feet of the leased premises and completed in the same producing reservoir or in a any case where drainage is occurring, the right to further extend the lease by such shut-in [~~gas well~~] royalty payments shall cease, but such lease shall remain in force and effect for the remainder of the current one year period for which the shut-in [~~gas well~~] royalty has been paid, and for four additional and successive periods of one year each [~~an additional period not to exceed a combined total of three years from the expiration of the primary term or from the first day of the month next succeeding the month in which production ceased~~] by the payment by the lessee of compensatory royalty, at the royalty rate provided for in such university lease of the value at the well of production from the well which is causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises; [~~as would be due on an equivalent amount of like quality gas produced and delivered from the well completed in the same producing reservoir from which gas is being sold and delivered and which is situated within 1,000 feet of, or draining, the leased premises on which shut-in gas well is situated;~~] such compensatory royalty to be paid monthly to the Board of Regents of The University of Texas System at Austin, Texas, beginning on or before the last day of the month next succeeding the month in which such oil or gas is sold and delivered from the well situated within 1,000 feet of, or draining, the leased premises and completed in the same producing reservoir; provided further, that nothing herein shall relieve the lessee of the obligation of reasonable development, nor of the obligation to drill offset wells required by Section 66.75 of this code.

SECTION 39. Subsection (h) is added to Section 66.70, Education Code, to read as follows:

(h) The agreement shall provide that compensatory royalty be paid at the royalty rate provided by the university lease and shall provide that compensatory royalty be paid on the market value at the well of production from the well located on non-university lands or university lands leased at a lesser royalty situated within 1,000 feet of or draining the university leased premises.

SECTION 40. Subsection (a), Section 66.74, Education Code, is amended to read as follows:

(a) Royalty as stipulated in the sale shall be paid to the Board of Regents of The University of Texas System at Austin, Texas, for the benefit of the university permanent fund as provided in this section.

(1) The board shall set by rule the date for making royalty payments and for filing any reports, documents, or other records required to be filed by this section. However, the board may not set the due date for [~~Royalty~~] royalty on oil [~~is due and payable on or~~] before the fifth day of the second month succeeding the month of production and may not set the due date for royalty on gas [~~is due and payable on or~~] before the 15th day of the second month succeeding the month of production.

SECTION 41. Subchapter B, Chapter 52, Natural Resources Code, is amended by adding Section 52.036 to read as follows:

52.036 Temporary Reduction of Gas Royalty Rates

(a) This section shall only apply to lands which are described in subsections (1) and (2) of Section 52.011 of this Code, which have been leased by the board on the basis of a royalty bid and at a royalty rate exceeding 25%, and which have not been unitized or pooled by the board.

(b) If the value of gas from such lands is at or below $3.00 for each 1,000 cubic feet of gas, the board may reduce the royalty rate for gas produced from such lands after the effective date of this section and before September 1, 1990 as follows:

(1) For gas valued at $1.50 or less for each 1,000 cubic feet of gas, the board may reduce a royalty rate to 25%.

(2) For gas valued from $1.51 to $2.00 for each 1,000 cubic feet of gas, the board may reduce a royalty rate to 30%.

(3) For gas valued from $2.01 to $2.50 for each 1,000 cubic feet of gas, the board may reduce a royalty rate to 35%.

(4) For gas valued from $2.51 to $3.00 for each 1,000 cubic feet of gas, the board may reduce a royalty rate to 40%.

(c) For purposes of this section, the value of the gas from such lands shall be the highest market price paid or offered for gas of comparable quality in the general area where produced and when run, or the gross price paid or offered to the producer, whichever is greater.

(d) The reduced temporary royalty rates may only apply to gas produced from the applicable lands after the effective date of this section and before September 1, 1990 and will in no way affect the royalty rate of oil or condensate produced from any state lands. This section does not authorize the board to increase royalty rates owed under executed state leases but only grants the board discretion to temporarily reduce royalty rates for certain gas production."

The amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2056 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2056** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 592 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 592, Relating to the offense of false identification as a peace officer and misrepresentation of property as belonging to a law enforcement agency.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 592 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 592** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2592 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2592, Relating to the county courts at law in Ector County.

The bill was read second time.

Senator Anderson offered the following amendment to the bill:

Amend **H.B. 2592** as follows:

Amend page 3, line 11 by adding SECTION 5, and renumbering all other sections accordingly.

SECTION 5. Section 2(a), Chapter 1074, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-323b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The County Court at Law of Panola County has concurrent jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 [~~and does not exceed $50,000~~], excluding interest;

(2) appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy;

(3) eminent domain cases and proceedings, regardless of the amount in controversy; and

(4) cases and proceedings involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; suits to declare a marriage void; independent actions involving child support and custody of minors and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2592 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2592** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1226

Senator Glasgow called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1226** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1226** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Anderson, Harris, McFarland and Santiesteban.

COMMITTEE SUBSTITUTE HOUSE BILL 440 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 440, Relating to state agencies paying court costs and attorney's fees of small businesses that prevail in a dispute with a state agency.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **C.S.H.B. 440** as follows:

After the word "action;" in section 2 (a) (1) add the word "and"

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 440 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 440** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2291 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2291, Relating to the involuntary termination of the parent-child relationship.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2291 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2291** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2597

Senator Henderson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2597** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2597** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Henderson, Chairman; Brown, Green, Washington and Whitmire.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Reports on the following bills by a non-record vote:

H.B. 2243
H.B. 150
S.B. 1108
S.B. 481

H.B. 1922, Relating to the reporting of funds collected and expanded by governing boards of institutions of higher education.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1131**: Shelley, Chairman; Watson, Barton, Polumbo and Arnold.

The House refused to concur in Senate amendments to **H.B. 2085** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Stiles, Chairman; Oakley, Repp, Lucio and Campbell.

The House refused to concur in Senate amendments to **H.B. 2119** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Lucio, Chairman; Martinez, A. Luna, Larry and Price.

The House refused to concur in Senate amendments to **H.B. 2556** and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Campbell, Shea, S. Johnson, Perry and Lucio.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 2035 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2035, Relating to the authority of a municipality to acquire water or sewer utility facilities in and provide water or sewer service in all incorporated areas, including areas annexed by the municipality.

The bill was read second time.

Senator Uribe offered the following committee amendment to the bill:

Amend **H.B. 2035**, Section 1, by adding subsection (j), which shall read as follows:

(j) This section shall only apply in a case where the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Uribe and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2035 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2035** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Zaffirini asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 717 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 717, Relating to penalties for dumping refuse on or near a Texas highway.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 717 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 717** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1675 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1675, Relating to the circumstances under which a home-rule municipality may hold a nonbinding referendum.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1675 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1675** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1299 ON THIRD READING

Senator Parmer, on behalf of Senator Washington, moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1299** be placed on its third reading and final passage.

H.B. 1299, Relating to the minimum staffing requirements of county jails.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 2098 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2098, Relating to the requirements governing awarding of contracts by cities.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2098 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2098** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1938 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1938, Relating to the discharge, suspension, or demotion of a commissioned officer in the Department of Public Safety.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1938 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1938** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2281 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2281, Relating to student services fees at institutions of higher education.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2281 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2281** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 890 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 890, Relating to the extension of the term of, creation of, addition to, or modification of restrictive covenants applicable to certain real estate subdivisions.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 890 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 890** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

(President in Chair)

HOUSE BILL 2456 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2456, Relating to personnel who may draw blood specimens of driving-while-intoxicated suspects upon the request or order of a peace officer.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend Section 1 of **H.B. 2456**, page 1, of the Committee Printing by adding the words: "The sample must be taken in a sanitary place inspected on a periodic basis by the county in which the sample is taken" to follow the word "therein" on line 34.

EDWARDS
BROWN

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2456 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2456** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

LEAVE OF ABSENCE

Senator Tejeda was granted leave of absence for the remainder of today on account of important business on motion of Senator Brooks.

COMMITTEE SUBSTITUTE HOUSE BILL 1300 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1300, Relating to the suspension of driver's licenses of persons convicted of the offense of driving while intoxicated and educational programs for those persons.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1300** by inserting the following section in the appropriate place and renumbering accordingly:

SECTION . Section 5(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) No person who is under the age of eighteen (18) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school. A person who is eighteen (18) years of age or older may not operate a vehicle as a school bus until he has been properly licensed to operate a school bus. It shall be unlawful for any person to be employed to drive a motor vehicle while in use as a school bus for the transportation of pupils who has not undergone a physical examination which reveals his physical and mental capabilities to safely operate a school bus. Such physical examinations shall be conducted annually for each driver. A pre-employment driver's license check shall have been made with the Texas Department of Public Safety prior to the employment and the person's driving record must be acceptable according to standards developed jointly by the State Board of Education and the Texas Department of Public Safety. Effective at such date and under provisions as may be determined by the State Board of Education, the driver of a school bus shall have in his possession a certificate stating he is enrolled in, or has completed, a driver training course in school bus safety education that has been approved jointly by the State Board of Education and the Texas Department of Public Safety. The bus driving certificate shall remain valid for a period of three years. This subsection does not affect the right of any otherwise qualified person with a hearing disability because of the hearing disability to be licensed, certified, and employed as a bus driver for vehicles used to transport hearing impaired students or persons.

The amendment was read and was adopted viva voce vote.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1300** by renumbering SECTION 2 and SECTION 3 as SECTION 3 and SECTION 4, respectively, and adding new Section 2 to read as follows:

SECTION 2. Section 4A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is repealed.

The amendment was read.

On motion of Senator Washington and by unanimous consent, Floor Amendment No. 2 was withdrawn.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1300 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1300** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 30, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to the following House Bills and Resolutions by a non-record vote:

H.B. 957	**H.B. 1431**
H.B. 999	**H.B. 1896**
H.B. 1032	**H.B. 2125**
H.B. 1006	**H.B. 2224**
H.B. 1043	**H.B. 2347**
H.B. 1160	**H.B. 2546**
H.B. 1213	**H.C.R. 107**
H.B. 1303	**H.C.R. 110**
H.B. 1412	

The House has failed to adopt the Conference Committee Report on **S.B. 270** by a record vote of 60 ayes, 70 noes, 1 present-not voting.

The House has concurred in Senate amendments to the following House Bills by a non-record vote:

H.B. 2213	**H.B. 614**

H.B. 128	**H.B. 651**
H.B. 365	**H.B. 667**
H.B. 391	**H.B. 696**
H.B. 410	**H.B. 705**
H.B. 474	**H.B. 707**
H.B. 497	**H.B. 742**
H.B. 500	**H.B. 814**
H.B. 503	**H.B. 925**
H.B. 554	**H.B. 942**
H.B. 559	**H.B. 2599**
H.B. 1586	**H.B. 1961**

The House has adopted the Conference Committee Report on **H.B. 2181** by a record vote of 116 ayes, 16 noes, 1 present-not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1453 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1453, Relating to the liability in tort of certain subregional transportation authorities.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Amend **H.B. 1453** by striking Section 2 and, in its place, substituting the following:

SECTION 2. Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Section 23B to read as follows:

Sec. 23B. TORT CLAIMS. Any authority established under this Act or a public transportation entity created under Title 112, Vernon's Texas Civil Statutes, for the purposes of public transportation as defined in this Act, is a "unit of government," as that term is defined by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code), and all operations of an authority are essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act. If an independent contractor of the authority is performing a function of the authority, the contractor is liable for damages to the extent that the authority would be liable if the authority itself were performing the function.

The committee amendment was read and was adopted viva voce vote.

Senator Harris offered the following amendment to the bill:

Amend **H.B. 1453**, by inserting the words "after January 1, 1980, and before January 1, 1987", on line 22 of page 1, between the words "created" and "under".

The amendment was read and was adopted viva voce vote.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1453 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1453** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Tejeda.

HOUSE BILL 2623 ON SECOND READING

Senator Edwards asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2623, Relating to the rate of state contributions to, and an increase in benefits for certain annuitants of, the Teacher Retirement System of Texas.

There was objection.

Senator Edwards then moved to suspend the regular order of business and take up **H.B. 2623** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Uribe, Washington, Whitmire, Zaffirini.

Nays: Jones, Leedom.

Absent: Henderson, Sims, Truan.

Absent-excused: Tejeda.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend **H.B. 2623** by adding Section 6 and renumbering the sections thereafter:

SECTION 6. Subchapter E, Chapter 35, Title 110B, Revised Statutes, is amended by adding Section 35.4031 to read as follows:

Sec. 35.4031. REFUND OF MEMBER'S CONTRIBUTIONS. (a) The retirement system shall refund to a member who received in the 1984-85 school year a career ladder supplement under Section 16.057 of the Education Code or an increase in compensation for service as a public school teacher, any portion of the member's contributions computed and paid in that school year that exceeded the board's limitation on the amount of increases in annual compensation that may be subject to credit and deposit under Section 35.110 of this subtitle.

(b) The board shall make a refund to a member under Subsection (a) of this section regardless of whether the member's service in the 1984-85 school year met the requirement under Section 35.110 of this subtitle that the service be the member's final years of employment.

(c) The retirement system shall complete the refunds authorized under this section not later than March 1, 1988.

(d) This section expires on March 2, 1988.

The amendment was read and was adopted by the following vote: Yeas 15, Nays 9.

Yeas: Armbrister, Blake, Brown, Glasgow, Harris, Jones, Krier, Leedom, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Washington, Zaffirini.

Nays: Anderson, Barrientos, Brooks, Edwards, Farabee, Green, Johnson, Lyon, Parker.

Absent: Caperton, Henderson, Sims, Truan, Uribe, Whitmire.

Absent-excused: Tejeda.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2623 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2623** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 3.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Whitmire, Zaffirini.

Nays: Jones, Leedom, Washington.

Absent: Parker, Sims, Truan, Uribe.

Absent-excused: Tejeda.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Anderson, Jones and Leedom asked to be recorded as voting "Nay" on the final passage of the bill.

MOTION TO PLACE HOUSE BILL 1939 ON SECOND READING

Senator Brown moved to suspend the regular order of business and the Intent Calendar rule to take up for consideration at this time:

H.B. 1939, Relating to the removal or alteration of serial numbers on tractors, farm implements, or special mobile equipment.

On motion of Senator Brown and by unanimous consent, the motion to suspend the regular order and the Intent Calendar rule was withdrawn.

HOUSE BILL 2193 ON SECOND READING

On motion of Senator Anderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2193, Relating to adoption of the Uniform Fraudulent Transfer Act, governing fraudulent transfers of assets and fraudulent obligations.

The bill was read second time.

Senator Anderson offered the following amendment to the bill:

Amend **H.B. 2193** as follows:

On page 1, line 64, amend SECTION 1, Sec. 24.002 (2)(c), after the word "tenant", by inserting the following:

", under the law of another jurisdiction."

On page 1, line 65, amend SECTION 1, Sec. 24.002 (3), between the word "payment" and the "," by inserting the following:

"or property"

On page 2, line 2, amend SECTION 1, Sec. 24.002 (4), after the word "person", by inserting the following:

", including a spouse, minor, or ward,"

On page 2, line 64, amend SECTION 1, Section 24.003 between "not" and "the debtor's", by striking "paying" and inserting "able to pay"

On page 3, line 27, amend SECTION 1, Sec. 24.005 (a) by inserting before the word "before" the phrase "within a reasonable time"

On page 3, line 39, amend SECTION 1, Sec. 24.005 (a)(2)(B) by striking "or reasonably should have believed"

On page 3, line 47, SECTION 1, Sec. 24.005 (b)(3) by striking "disclosed or"

On page 3, line 24, amend SECTION 1, Sec. 24.004 by adding subsection (d) as follows:

(d) "Reasonably equivalent value" includes without limitation, a transfer or obligation that is within the range of values for which the transferor would have willfully sold the assets in an arms length transaction.

On page 4, lines 46-49, amend SECTION 1, Sec. 24.008 by striking subsection (a)(2) and adding the following:

(a)(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Texas Civil Practices and Remedies Code relating to ancillary proceedings; or

On page 5, lines 12-20, amend SECTION 1, Sec. 24.009 by striking subsection (d) and inserting the following:

(d)(1) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, at the transferee's or obligee's election, to the extent of the value of any improvements made by a good faith transferee or obligee, and given the debtor for the transfer or obligation, to:

(A) a lien, prior to the creditor's claim, or a right to retain any interest in the asset transferred;

(B) enforcement of any obligation incurred; or

(C) a reduction in the amount of the liability on the judgement.

(2) In this subsection, "improvement" includes:

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

On page 5, line 38, amend SECTION 1, Sec. 24.010, between "ACTION." and "A cause" by inserting:

"(a)"

On page 5, line 50, amend SECTION 1, Sec. 24.010, by adding subsection (b) as follows:

(b) A cause of action with respect to a fraudulent transfer of obligation under this chapter is extinguished as to a spouse, minor, or ward unless the action is brought within two years after the cause of action accrues, or if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant, subject to the provisions relating to disabilities under Chapter 16, Texas Civil Practices and Remedies Code.

On page 5, line 61, amend SECTION 1 by adding Section 24.013 to read as follows:

Section 24.013. GIFT OF TANGIBLE PERSONAL PROPERTY IS VOID. A gift of tangible personal property is void unless

(1) the gift is evidenced by

(A) a deed that has been duly acknowledged or proved and recorded; or

(B) a will that has been duly probated; or

(2) actual possession of the subject matter of the gift is in the donee or someone claiming under him.

The amendment was read and was adopted viva voce vote.

On motion of Senator Anderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2193 ON THIRD READING

Senator Anderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2193** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 33 ON SECOND READING

On motion of Senator Krier, on behalf of Senator Tejeda, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 33, Relating to the limitations period for fraud actions.

The bill was read second time.

Senator Krier offered the following committee amendment to the bill:

Amend **H.B. 33** by adding subsection (b) to Section 1, to read as follows:

(b) A cause of action in a suit brought under subsection (a) of this section, as that term is used in this section, arises when the person who brings the cause of

action, or the person on whose behalf the cause of action is brought, discovers, or by the exercise of reasonable diligence should have discovered, that the event or incident complained of occured.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 33 ON THIRD READING

Senator Krier, on behalf of Senator Tejeda, moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 33** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1939 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business and the Intent Calendar rule were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1939, Relating to the removal or alteration of serial numbers on tractors, farm implements, or special mobile equipment.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend **H.B. 1939** by striking all underlined language after the word "misdemeanor" on line 24 on page 1 through line 3 on page 2.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1939 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1939** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1931 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1931, Relating to the procedures governing purchases made by counties; amending Sections 3, 4, 10, and 12, County Purchasing Act (Article 2368a.5, Vernon's Texas Civil Statutes).

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1931 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1931** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Tejeda.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Tejeda.

HOUSE BILL 1606 ON THIRD READING

The President laid before the Senate on its third reading and final passage:

H.B. 1606, Relating to exempting newspapers and magazines from the sales and use tax.

Senator Harris offered the following amendment to the bill:

Amend **H.B. 1606** by adding the following language:

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.320 to read as follows:

Sec. 151.320 MAGAZINES. (a) Subscriptions to magazines that are sold for a semiannual or longer period and are entered as second class mail are exempted from the taxes imposed by this chapter.

(b) "Magazine" means a publication that is usually paperbacked and sometimes illustrated, that appears at a regular interval, and that contains stories, articles, and essays by various writers and advertisements.

and renumbering the subsequent sections.

The amendment was read and was adopted by the following vote: Yeas 20, Nays 8.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Green, Harris, Henderson, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sims, Whitmire, Zaffirini.

Nays: Edwards, Farabee, Glasgow, Johnson, Jones, Lyon, Parmer, Washington.

Absent: Truan, Uribe.

Absent-excused: Tejeda.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed by the following vote: Yeas 21, Nays 7.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Glasgow, Green, Harris, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Sarpalius, Sims, Whitmire, Zaffirini.

Nays: Barrientos, Farabee, Henderson, Johnson, Jones, Santiesteban, Washington.

Absent: Truan, Uribe.

Absent-excused: Tejeda.

CONFERENCE COMMITTEE REPORT
SENATE JOINT RESOLUTION 17

Senator Farabee submitted the following Conference Committee Report:

Austin, Texas
May 30, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.J.R. 17** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FARABEE	GIBSON
HENDERSON	WILLIAMSON
WASHINGTON	LUCIO
CAPERTON	LARRY
ARMBRISTER	MARCHANT
On the part of the Senate	On the part of the House

SENATE JOINT RESOLUTION

Proposing a constitutional amendment permitting the legislature to include members of more than one department of state government in the membership of an agency or committee.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III of the Texas Constitution is amended by adding Section 66 to read as follows:

Sec. 66. The legislature may include the speaker of the house of representatives in the membership of an agency or committee that includes officers of the executive department of state government and performs executive functions.

SECTION 2. This constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment

permitting the legislature to include the speaker of the house of representatives or the speaker's appointee in the membership of an executive agency or committee."

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
SENATE BILL 522

Senator Sarpalius submitted the following Conference Committee Report:

Austin, Texas
May 29, 1987

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 522** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SARPALIUS	HARRISON
LYON	HORN
EDWARDS	WATERFIELD
WHITMIRE	A. MORENO
ANDERSON	R. CUELLAR
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to gasoline tax credits for gasoline and alcohol mixtures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 153.123, Tax Code, as amended, is amended to read as follows:

(a) For a gasoline and alcohol mixture that [~~which~~] meets the requirements of Subsection (e) of this section and except as provided in Subsection (b), a credit may be claimed by a distributor, pursuant to Subsection (d) of this section. The amount of the credit is[~~, in the following amounts:~~

[~~(1) until January 1, 1987, five cents per gallon on the first sale or use of that mixture;~~

[~~(2) from January 1, 1987, through December 31, 1987,~~] four cents per gallon on the first sale or use of that mixture. On[;

[~~(3) from January 1, 1988, through December 31, 1988, three cents per gallon on the first sale or use of that mixture;~~

[~~(4) from January 1, 1989, through December 31, 1989, two cents per gallon on the first sale or use of that mixture;~~

[~~(5) from January 1, 1990, through December 31, 1990, one cent per gallon on the first sale or use of that mixture; and~~

[~~(6) on~~] and after January 1, 1991, no credit may be claimed. This section expires January 1, 1992.

SECTION 2. Subdivisions (1), (2), (3), and (4), Subsection (b), Section 153.123, Tax Code, as amended, are amended to read as follows:

(1) On or before the 30th day preceding each calendar quarter, the comptroller shall estimate (based on the most recent data available) the total

volume, in gallons, of first sales or uses of gasoline and alcohol mixture meeting the requirements of Subsection (e) of this section, and the total amount of credits that [~~which~~] will be allowed to distributors under Subsection (d), both for the next calendar quarter. If the total amount of that estimated credit exceeds $2,712,500 for a quarter of 1987, $1,100,000 for each quarter of 1988, $880,000 for each quarter of 1989, or $704,000 for each quarter of 1990, the comptroller shall estimate and publish in the Texas Register a credit per gallon (rounded to the nearest one-tenth cent) of mixture that [~~which~~], if applied to first sales or uses of gasoline and alcohol mixture containing alcohol not fermented and distilled in [~~produced from renewable sources produced outside~~] the state, would limit the total of the credits allowed to the applicable quarterly amount specified by this subdivision [~~$2,712,500~~] for the next calendar quarter. Such estimated amount shall be the maximum amount of the credit that [~~which~~] may be claimed for the next calendar quarter for first sales or uses of gasoline and alcohol mixture containing alcohol not fermented and distilled in [~~produced from renewable sources produced outside~~] the state.

(2) If the total amount of the estimated credit resulting from first sales or uses of gasoline and alcohol mixtures containing alcohol fermented and distilled [~~from renewable sources produced~~] in the state only exceeds the applicable quarterly amount specified by Subdivision (1) of this subsection, [~~$2,712,500~~] for the next calendar quarter, then no credit may be claimed for such mixtures containing alcohol not fermented and distilled in [~~produced from renewable sources from outside~~] the state, and the comptroller shall estimate and publish in the Texas Register a credit per gallon (rounded to the nearest one-tenth cent) of mixture that [~~which~~], if applied to first sales or uses of such mixtures containing alcohol fermented and distilled [~~produced from renewable sources produced~~] in the state, would limit the total of the credits allowed to the applicable quarterly amount specified by Subdivision (1) of this subsection [~~$2,712,500~~] for the next calendar quarter. Such estimated amount shall be the maximum of the credit that [~~which~~] may be claimed for the next calendar quarter for first sales or uses of gasoline and alcohol mixture containing alcohol fermented and distilled in [~~produced from renewable sources from within~~] the state.

(3) In arriving at estimates of credits per gallon of mixture that [~~which~~] will limit the total credits under this subsection, [~~to $2,712,500 per calendar quarter,~~] the comptroller shall consider actual total credits during the second preceding calendar quarter and shall, if necessary, include an adjustment in the estimate for the next calendar quarter to account for the difference between actual total credits during the second preceding calendar quarter and the applicable quarterly amount specified by Subdivision (1) of this subsection for the quarter for which the estimate is made [~~$2,712,500~~].

(4) Except as provided in this subdivision, no mixture that contains alcohol that was fermented [~~produced~~] or distilled in another state is eligible for a credit on its first sale or use in the state. If the comptroller certifies that another state provides an exemption from that state's taxes applicable to gasoline or a credit or refund for taxes collected or an amount in lieu of taxes collected on a mixture of gasoline and alcohol, and if the other state's exemption, credit, or refund allowance applies to a mixture that includes alcohol fermented [~~produced~~] or distilled in Texas, and if the alcohol fermented or distilled [~~produced~~] in the other state meets the specifications provided by Subdivisions (1), (2), and (3) of Subsection (e) of this section, then the specifications for the mixture for which [~~the transfers shall be made to the gasoline and alcohol mixture fund and for which~~] credits [~~or payments~~] shall be made shall include mixtures that include alcohol fermented [~~produced~~] and distilled in the other state or in Texas and the other state. However, if a mixture of alcohol fermented [~~produced~~] or distilled in another state and gasoline qualifies

under this subsection for a [~~transfer and a~~] credit, the amount of the [~~transfer and~~] credit under this section for the mixture may not exceed the amount of the exemption, credit, or refund (stated in or converted to cents for each gallon of the mixture) provided by the state in which the alcohol was fermented [~~produced~~] or distilled.

SECTION 3. If adopted by a vote of two-thirds of all members elected to each house of the legislature, this Act takes effect June 1, 1987, and applies to credits granted under Section 153.123, Tax Code, beginning with the calendar quarter beginning July 1, 1987. Otherwise, this Act takes effect September 1, 1987, and applies to credits granted under Section 153.123, Tax Code, beginning with the calendar quarter beginning October 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE ON HOUSE BILL 1652

Senator Glasgow called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1652** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1652** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Anderson, Harris, McFarland and Santiesteban.

SENATE CONFEREES ON HOUSE BILL 1226 DISCHARGED

On motion of Senator Glasgow and by unanimous consent, the Senate conferees on **H.B. 1226** were discharged.

NEW SENATE CONFEREES ON HOUSE BILL 1226 APPOINTED

Senator Glasgow moved that new Senate conferees be appointed on **H.B. 1226**.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1226** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Armbrister, Sarpalius, Sims and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 1373

Senator Edwards called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1373** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1373** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Barrientos, Glasgow, Santiesteban and Sarpalius.

CONFERENCE COMMITTEE ON HOUSE BILL 538

Senator Zaffirini, on behalf of Senator Sims, called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 538** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 538** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chairman; Armbrister, Brown, Harris and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 1947

Senator Harris called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1947** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1947** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chairman; Blake, Green, Henderson and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 784

Senator Lyon called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 784** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 784** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lyon, Chairman; Edwards, Glasgow, Parker and Sarpalius.

CONFERENCE COMMITTEE ON HOUSE BILL 176

Senator Lyon called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 176** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 176** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lyon, Chairman; Edwards, Glasgow, Parker and Sarpalius.

SENATE BILL 1405 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 1405** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Wright

Amend **S.B. 1405** on page 5 by renumbering the current Section 7 as Section 8 and inserting the following as Section 7:

SECTION 7. This Act shall be applied prospectively only. Nothing in this Act affects either procedurally or substantively a case that was filed in the courts of this state before the effective date of this Act.

Floor Amendment No. 2 - Wright

Amend **S.B. 1405** as follows:

On page 1, line 9, delete "Bureau" and substitute "Office".

On page 1, line 10, insert "and" between the comma and "accredited" and strike "for membership in" and substitute "by".

On page 1, line 11, insert "and obtains blood from voluntary donors as defined by the United States Food and Drug Administration and the American Association of Blood Banks" between the comma and "or".

On page 1, line 12 between "Banks" and the period, insert "and obtain blood from voluntary donors as defined by the United States Food and Drug Administration and the American Association of Blood Banks"

Floor Amendment No. 3 - Wright

Amend **S.B. 1405** as follows:

On page 4, line 20, insert ", except for negligence" between "activity" and the period.

On page 4, line 21, strike "The person remains liable for the person's own negligence, except that" and capitalize "the".

Floor Amendment No. 4 - McWilliams

To amend **S.B. 1405**, SECTION 1. by adding Subsection (3) as follows:

(3) "HIV" means human immunodeficiency virus which causes "AIDS" and "ARC" (AIDS Related Complex). The early stages of this deadly infection has no

apparent symptoms for months or years and can only be diagnosed by testing the blood.

Floor Amendment No. 5 - McWilliams

Amend **S.B. 1405** as follows:

On page 2, line 2, strike "to:" and insert ", including HIV test results to:".
On page 2, line 3, strike "if" and substitute "as".
On page 2, line 6, strike "if" and substitute "as".
On page 2, line 10, strike "if" and substitute "as".
On page 2, line 11, strike "if" and substitute "as".
On page 2, line 13, strike "may" and substitute "shall".
On page 2, line 1, strike "may" and substitute "shall"; strike "only" and substitute "all."

Floor Amendment No. 6 - McWilliams

To amend **S.B. 1405**, SECTION 2. as follows:

page 1, line 16 change "may" to "shall";
page 1, line 18 after "AIDS," insert "HIV".

Floor Amendment No. 7 - McWilliams

Amend **S.B. 1405** on page 3, between lines 13 and 14, by inserting a new Subsection (g) to Section 3 to read as follows:

(g) All hospitals, physicians, health agencies, and other transfusers of blood shall follow the official "Operation Look-Back" procedure of the American Association of Blood Banks in notifying past and future recipients of blood, and shall follow the procedures in a mandatory and strict fashion. The only exception to the notification of the recipient of blood shall be in the case of death of the recipient or the inability to locate the recipient.

Floor Amendment No. 8 - McWilliams

Amend **S.B. 1405** as follows:

On page 3, line 5, strike "may" and insert "shall".
On page 3, line 6, between "hospitals" and "where", insert "or other facilities".
On page 3, line 6, between "transfused" and "to", insert "or provided,".
On page 3, line 2, strike "may" and insert "shall on request."
On page 3, line 5, after "results", which are found to be confirmed as HIV positive by the normal procedures blood banks presently used or found to be contaminated by other infectious diseases."

Floor Amendment No. 9 - Wright

Amend **S.B. 1405** as follows:

(1) On page 3, line 7, strike "and" and substitute "or".
(2) On page 4, line 11, strike "Class A" and substitute "Class C".

The amendments were read.

Senator Brooks moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1405** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chairman; Anderson, Green, Whitmire and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 1848

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1848** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1848** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chairman; Barrientos, Blake, Farabee and Green.

CONFERENCE COMMITTEE ON HOUSE BILL 1869

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1869** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1869** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chairman; Anderson, Green, Johnson and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 650

Senator Caperton called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 650** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 650** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Sims, Uribe, Whitmire and Zaffirini.

SENATE BILL 893 WITH HOUSE AMENDMENTS

By unanimous consent, Senator Caperton called **S.B. 893** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - G. Luna

Amend **S.B. 893** as follows:

On page 1, add the following on line 23, after "property": which is titled or held with indicia of title becomes the property of the surviving spouse on the death of a spouse.

Floor Amendment No. 2 - G. Luna

Amend **S.B. 893** as follows:

On page 2, delete lines 6-11, and change subsequent numbers accordingly.

Floor Amendment No. 3 - Toomey

Amend **S.B. 893** by adding the following Section 1 and renumbering the other sections appropriately:

SECTION 1. Subchapter C, Chapter 5, Family Code, is amended to read as follows:

SUBCHAPTER C. PROPERTY AGREEMENTS
PART 1. UNIFORM PREMARITAL AGREEMENT ACT

Sec. 5.41. DEFINITIONS. In this part:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Sec. 5.42. FORMALITIES. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

Sec. 5.43. CONTENT. (a) Parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

Sec. 5.44. EFFECT OF MARRIAGE. A premarital agreement becomes effective on marriage.

Sec. 5.45. AMENDMENT; REVOCATION. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

Sec. 5.46. ENFORCEMENT. (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Sec. 5.47. ENFORCEMENT; VOID MARRIAGE. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Sec. 5.48. LIMITATION OF ACTIONS. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Sec. 5.49. APPLICATION AND CONSTRUCTION. Sections 5.41 through 5.50 of this subchapter shall be applied and construed to effect their general purpose to make uniform the law with respect to the subject of these sections among states enacting them.

Sec. 5.50. SHORT TITLE. This part may be cited as the Uniform Premarital Agreement Act.

PART 2. OTHER PROPERTY AGREEMENTS

Sec. 5.51. PROPERTY DEFINED. In this part "property" has the meaning assigned by Section 5.41 of this code.

Sec. 5.52. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY. At any time, the spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes his or her separate property.

Sec. 5.53. AGREEMENTS BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY. At any time, the spouses may agree that the income or property arising from the separate property then owned by one of them, or which may thereafter be acquired, shall be the separate property of the owner.

Sec. 5.54. FORMALITIES. A partition or exchange agreement must be in writing and signed by both parties.

Sec. 5.55. ENFORCEMENT. (a) A partition or exchange agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

Sec. 5.56. PARTITION OR EXCHANGE AGREEMENTS: RIGHTS OF CREDITORS; RECORDATION. (a) A provision of a partition or exchange agreement made under this subchapter is void with respect to the rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) A partition or exchange agreement made under this subchapter may be recorded in the deed records of the county in which a party resides and in the county in which the real property affected is located. An agreement, partition, or exchange agreement made under this subchapter is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the instrument is acknowledged and recorded in the county in which the real property is located.

~~[Sec. 5.41. AGREEMENT IN CONTEMPLATION OF MARRIAGE. (a) Before marriage, persons intending to marry may enter into a marital property agreement concerning their property then existing or to be acquired, as they may desire.~~

~~[(b) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate, and if there be no guardian of the minor's estate, with the subscribed, written consent of the minor's managing conservator.~~

~~[Sec. 5.42. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY. At any time, the spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes his or her separate property.~~

~~[Sec. 5.43. AGREEMENTS BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY. At any time, the spouses may agree that the income or property arising from the separate property then owned by one of them, or which may thereafter be acquired, shall be the separate property of the owner.~~

~~[Sec. 5.44. FORMALITIES OF AGREEMENTS. Each agreement, partition, or exchange agreement made under this subchapter must be in writing and subscribed by all parties.~~

~~[Sec. 5.45. MARITAL AGREEMENTS: BURDEN OF PROOF. In any proceeding in which the validity of a provision of an agreement, partition, or exchange agreement made under this subchapter is in issue as against a spouse or a person claiming from a spouse, the burden of showing the validity of the provision is on the party who asserts it. The proponent of the agreement, partition, or exchange agreement or any person claiming under the proponent has the burden to prove by clear and convincing evidence that the party against whom enforcement of the agreement is sought gave informed consent and that the agreement was not procured by fraud, duress, or overreaching.~~

~~[Sec. 5.46. MARITAL AGREEMENTS: RIGHTS OF CREDITORS; RECORDATION. (a) A provision of an agreement, partition, or exchange agreement made under this subchapter is void with respect to rights of a preexisting creditor whose rights are intended to be defrauded by it.~~

~~[(b) An agreement, partition, or exchange agreement made under this subchapter may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, an agreement, partition, or exchange agreement made under this subchapter is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.]~~

The amendments were read.

Senator Caperton moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 893** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Anderson, Brown, Green and Krier.

CONFERENCE COMMITTEE ON HOUSE BILL 1261

Senator Anderson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1261** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1261** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Anderson, Chairman; Glasgow, Green, Harris and Parker.

CONFERENCE COMMITTEE ON HOUSE BILL 1036

Senator Montford called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1036** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1036** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chairman; Caperton, Edwards, Lyon and Sims.

MOTION TO RECESS

On motion of Senator Brooks, the Senate agreed to recess at the conclusion of the Local and Uncontested Bills Calendar until 1:30 p.m. tomorrow.

AT EASE

The President at 7:57 p.m. announced the Senate would stand At Ease Subject to the Call of the Chair to conduct a Local and Uncontested Bills Calendar.

IN LEGISLATIVE SESSION

Senator Blake called the Senate to order as In Legislative Session at 8:02 p.m.

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

The regular order of business having been suspended by Senate Rule 14.1(f), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill.)

S.R. 645 (Zaffirini) Requesting presidents of State-supported universities to notify students of suspension if caught with illegal drugs and directing Coordinating Board to draw procedural guidelines to ensure that students possessing illegal drugs are guaranteed rights of due process prior to administrative disciplinary action. (vv)

S.R. 648 (Sarpalius) Directing the Senate Subcommittee on Agriculture to study certain issues during the interim. (vv)

S.R. 657 (Sarpalius) Directing the Senate Subcommittee on Agriculture to study the certification of animal reproduction technicians. (vv)

H.C.R. 152 (Santiesteban) Directing the Texas Department of Health to take certain actions regarding the prevalence of diabetes among Mexican Americans. (vv)

H.C.R. 202 (Brooks) Commending certain health and human services agencies and requesting the Long Term Care Coordinating Council to study needs of nursing home residents. (vv)

C.S.H.C.R. 213 (Brooks) Creating the Special Task Force on the Future of Long Term Health Care. (vv)

H.B. 349 (Henderson) Relating to the statute of limitations for the offense of organized criminal activity. (29-1) Washington "Nay" (30-0)

H.B. 517 (McFarland) Relating to the creation of municipal courts of record in Arlington. (29-1) Washington "Nay" (30-0)

H.B. 527 (Brown) Relating to the justifiable use of force in certain circumstances by jailers, guards, correctional officers, and peace officers. (29-1) Washington "Nay" (30-0)

H.B. 528 (Johnson) Relating to prohibiting a lead smeltering plant from locating within a certain distance from a residence. (29-1) Washington "Nay" (30-0)

H.B. 620 (Washington) Relating to certain types of discrimination by insurers. (29-1) Washington "Nay" (30-0)

C.S.H.B. 766 (Tejeda) Relating to duties of railroad corporations after accidents; providing a criminal penalty. (29-1) Washington "Nay" (30-0)

H.B. 906 (Barrientos) Relating to the transfer of the duty to register births and deaths from a justice of the peace acting as a local registrar of births and deaths to a county clerk upon written agreement between both parties. (29-1) Washington "Nay" (30-0)

H.B. 1069 (Green) Relating to the exemption of State military personnel from driver's license requirements. (29-1) Washington "Nay" (30-0)

H.B. 1077 (Santiesteban) Relating to prosecution by a city attorney of municipal court appeals. (29-1) Washington "Nay" (30-0)

C.S.H.B. 1084 (Barrientos) Relating to the commitment procedures and services for chemically dependent persons. (29-1) Washington "Nay" (30-0)

C.S.H.B. 1085 (Barrientos) Relating to the regulation of facilities that treat chemically dependent persons; providing civil penalties. (29-1) Washington "Nay" (30-0)

H.B. 1134 (Barrientos) Relating to the abolition of certain conservation and reclamation districts, including municipal utility districts, that become a part of more than one city. (29-1) Washington "Nay" (30-0)

H.B. 1141 (Brooks) Relating to reemployment of certain retirees of the Employees Retirement System of Texas. (29-1) Washington "Nay" (30-0)

C.S.H.B. 1176 (Caperton) Relating to the circumstances in which a peace officer may break down the door of a residence when making an arrest. (29-1) Washington "Nay" (30-0)

H.B. 1227 (Tejeda) Relating to the allowance of attorney's fees in a condemnation proceeding. (29-1) Washington "Nay" (30-0)

H.B. 1511 (Brown) Relating to the creation, powers, and duties of the Texas Space Commission. (29-1) Washington "Nay" (30-0)

Senator Brown offered the following committee amendment to the bill:

Amend **H.B. 1511**, on page 3 at line 16, by striking "1987" and in its place adding "1988", and by adding the following language after 1988; "provided however, that this Act is contingent upon a positive recommendation being made in writing to the Governor prior to September 1, 1988 by the Chairman of the Space Science Industry Commission established by **S.R. 210**, 70th Legislature."

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

H.B. 1616 (Johnson) Relating to eligibility of certain persons for coverage under certain accident and sickness insurance coverage. (29-1) Washington "Nay" (30-0)

H.B. 1699 (Zaffirini) Relating to the regulation of "mixed" waste containing hazardous and low-level waste. (29-1) Washington "Nay" (30-0)

C.S.H.B. 1827 (Tejeda) Relating to the information required in a personal bond. (29-1) Washington "Nay" (30-0)

H.B. 1837 (Brown) Relating to the identification of city and county-owned vehicles and heavy equipment. (29-1) Washington "Nay" (30-0)

H.B. 1927 (Brown) Relating to political subdivisions that may contract for the enforcement of certain warrants. (29-1) Washington "Nay" (30-0)

H.B. 2083 (Parker) Relating to certain reporting requirements regarding the installation of manufactured homes. (29-1) Washington "Nay" (30-0)

Senator Parker offered the following committee amendment to the bill:

Amend **H.B. 2083** by adding a new Section 2 and a new Section 3 to read as follows and renumbering current Section 2 and Section 4:

SECTION 2. Chapter 32, Tax Code, is amended by adding Section 32.014 to read as follows:

Sec. 32.014. TAX LIEN ON MANUFACTURED HOME SUBJECT TO SECURITY INTEREST. (a) A tax lien to secure the payment of a tax and any

penalties and interest imposed on a manufactured home does not attach to the real property on which the manufactured home is located, even if the manufactured home is affixed to the real property by installation on a permanent foundation, if on the January 1 on which the tax is imposed, the manufactured home is subject to a lien of record on a document of title issued on the manufactured home by the Texas Department of Labor and Standards.

(b) In this subsection, "manufactured home" has the meaning assigned by Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes).

SECTION 3. Section 4A, Texas Manufactured Housing Standards Act, as amended by Section 22 of **H.B. 855**, Acts of the Texas Legislature, Regular Session, 70th Session, 1987 is amended to read as follows:

Sec. 4A. MUNICIPALITIES. (a) An incorporated city may prohibit the installation of a mobile home for use or occupancy as a residential dwelling within its corporate limits. Any such prohibition must be prospective and shall not apply to a mobile home previously legally permitted and used or occupied as a residential dwelling within the city. Permits for such use and occupancy must be granted by an incorporated city for the replacement of a mobile home within its corporate limits with a HUD-Code manufactured home.

(b) Upon application the installation of HUD-Code manufactured homes shall be permitted as residential dwellings in those areas determined appropriate by the city, including subdivisions, planned unit developments, single lots, and rental communities and parks. An application to install a new HUD-Code manufactured home for use and occupancy as a residential dwelling is deemed approved and granted unless the city denies the application in writing within forty five (45) days from receipt of the application setting forth the reason.

(c) This section shall not effect the validity of any deed restriction that is otherwise valid.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

H.B. 2174 (Green) Relating to the regulation of solid waste; providing penalties. (29-1) Washington "Nay" (30-0)

H.B. 2190 (Harris) Relating to the creation of municipal courts of record in Addison. (29-1) Washington "Nay" (30-0)

H.B. 2269 (Washington) Relating to the activities that may be included in a municipality's community development program; containing other provisions relating to the subject. (29-1) Washington "Nay" (30-0)

H.B. 2299 (Henderson) Relating to the authority of a hospital authority to issue bonds for certain projects. (29-1) Washington "Nay" (30-0)

H.B. 2337 (Santiesteban) Relating to the boundaries of the El Paso County Lower Valley Water District Authority. (29-1) Washington "Nay" (30-0)

C.S.H.B. 2449 (Glasgow) Relating to the protection of the free exercise of religious beliefs. (29-1) Washington "Nay" (30-0)

H.B. 2554 (Caperton) Relating to the dissolution of the Grapeland Hospital District. (29-1) Washington "Nay" (30-0)

H.B. 2574 (Sarpalius) Relating to the creation of the County Court at Law No. 2 of Randall County. (29-1) Washington "Nay" (30-0)

H.B. 2588 (Glasgow) Relating to the composition of the Parker County Juvenile Board and to the appointment of an advisory council. (29-1) Washington "Nay" (30-0)

H.B. 2601 (Santiesteban) Relating to the creation, administration, powers, duties, operation, and financing of the El Paso County Tornillo Water Improvement District. (29-1) Washington "Nay" (30-0)

BILLS REMOVED FROM LOCAL AND UNCONTESTED BILLS CALENDAR

Number	Senators Removing
H.B. 1851	Washington, Blake
H.B. 1852	Washington, Blake
H.B. 1857	Washington, Blake
H.B. 1858	Washington, Blake
H.B. 1861	Washington, Blake

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

MEMORIAL RESOLUTION

H.C.R. 237 - (Brooks): Memorial resolution for former State Representative Steve Burgess.

CONGRATULATORY RESOLUTIONS

H.C.R. 177 - (Zaffirini): Requesting convenience stores not to sell cigarette papers without loose tobacco.

S.R. 680 - By Barrientos: Commending Eugene Kaloustian.

S.R. 681 - By Barrientos: Commending Dr. Victor Hinojosa.

S.R. 683 - By Truan: Extending congratulations to Mrs. Pat Hayes.

S.R. 685 - By Zaffirini: Commending Dr. Salvador S. Mora.

S.R. 686 - By Glasgow: Expressing appreciation and gratitude to The Grand Lodge of Texas, Ancient Free and Accepted Masons.

S.R. 687 - By Brooks: Commending LeRoy Melcher.

S.R. 688 - By Brooks: Commending Lucile Melcher.

S.R. 689 - By Brooks: Commending Dr. Philip Guthrie Hoffman.

S.R. 691 - By Glasgow: Commending the Walls Regional Hospital Volunteers, Cleburne.

S.R. 692 - By Glasgow: Extending congratulations to the Alvarado Middle School seventh grade boys.

S.R. 693 - By Glasgow: Extending congratulations to Mrs. Jean Story.

S.R. 694 - By Glasgow: Commending the Twentieth Century Club, Stephenville.

RECESS

Senator Blake announced at 8:17 p.m. that the Senate would stand recessed until 1:30 p.m. tomorrrow in accordance with a motion previously adopted by the Senate.